

# Global Environmental Governance and Community-Based Conservation in Kenya and Tanzania

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## ABSTRACT

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Tanzania

(Under the direction of Catharine Newbury)

This study examines the possibilities of executing Community-Based Conservation (CBC) as a viable environmental governance regime. It focuses on the contestations over access and control of natural resources with specific reference to wildlife. These contestations emanate from competing claims over natural resources between the state and the local communities. The study frames these contestations within the context of a property rights paradigm. It inquires as to whether the state in Africa, as presently constituted, can devolve authority over national natural resource control to communities so as to engender a private property right consciousness that the CBC model is premised on.

The study contends that African states as they currently exist are unlikely to devolve property rights to local communities in a way that would induce a private property right consciousness. It demonstrates that the interests of the African state in the distributional gains from national natural resources are perhaps too vested for it to devolve power if that devolution would cost it control of these resources. Moreover, there is the factor of the social forces that the state is embedded in and this complicates both its willingness and capacity to devolve wildlife property rights to local communities. Given such predicaments, the study shows that the state is capable of conceding in theory and defecting in practice, thereby undermining the institution of an environmental governance regime that favors CBC. The

study thus suggests that accomplishing environmental protection through the CBC model is problematic given the nature of the existing African states.

Nevertheless, in spite of the devolution predicaments, the study shows that communities can still accommodate a conservation regime that is not necessarily predatory, thus suggesting that there may still be some hope for biodiversity conservation even in the absence of the desirable CBC. The study concludes by specifying the conditions under which devolution of property rights in wildlife to local communities could take place in order to engender the private property rights consciousness anticipated by the proponents of CBC.

DEDICATION  
To the Memory of my Parents.

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## LIST OF ABBREVIATIONS

AWF	African Wildlife Foundation
CBC	Community-Based Conservation
CBO	Community-Based Organization
CORE	Conservation of Resources through Enterprise
DGO	District Game Officer
EAWLS	East African Wildlife Society
FZS	Frankfurt Zoological Society
KHWC MN	Kenya Human-Wildlife Conflict Management Network
KWS	Kenya Wildlife Service
KWWG	Kenya Wildlife Working Group
RoK	Republic of Kenya
URT	United Republic of Tanzania
USAID	United States Agency for International Development
WMA	Wildlife Management Areas
Y4C	Youth for Conservation

## **Chapter I**

### **General Introduction**

#### **I Introduction**

Though the project issues sounded very good to most of our members, there was (sic), perhaps, some doubts from the community as to whether such ideals will ever be achieved. “Will the government agree to this revival, for instance, of customary institutions to manage natural resources, instead of government institutions?” This is what the community kept on asking. They believed that the government strong presence can hardly be reversed. (*Final Report of MAA-PDO/NORAD COMMUNITY MOBILIZATION PROJECT* (n.d., but certainly 1997))

The story of natural resource control across Africa is one of state domination. States upheld their domination, oblivious of pressures to concede husbandry of these resources to local communities. Since the 1990s, however, various forces have worked against the state’s continued domination of natural resources. The result has been a paradigm shift in the management of natural resources, one from control by the central government to devolution to communities living with these resources. Devolution has been, however, a contested process. The competing interests that characterize the wildlife sector have largely driven this struggle for control. The struggle for control over Tanzania and Kenya’s wildlife is not an exception to this story. Although the government claims control over wildlife<sup>1</sup>, most of the wildlife lives outside of the designated protected areas, occupying land otherwise assigned to

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#### **NOTES**

<sup>1</sup>See Nshala (n.d. a) on the question of whether the government owns wildlife or holds it in Trust for the people of Tanzania.

private individuals or communities<sup>2</sup>. Thus, communities produce a good they do not own, and this poses a problem to the security of wildlife.

If communities decide that they are not benefiting from local wildlife, they will initiate land use practices hostile to the survival of this wildlife. Moreover, if communities do not value wildlife, they will welcome poachers, instead of reporting them to the authority.<sup>3</sup> Thus, the local wildlife will become endangered. The way to modify this outcome in order to produce a healthy wildlife sector would be for the authorities to guarantee communities security of wildlife property rights. A private property rights system would insure the future of both wildlife (biodiversity) and the multi-million dollar tourism industry that wildlife enables. This mindset is the position of most conservationists of the Community-Based Conservation (CBC) persuasion and the communities themselves (KWWG, 2003e; Queiroz, n.d.). The USAID, for example, has since the early 1990s supported the wildlife sector reform in Kenya on this premise through two of its major projects, namely COBRA and CORE.<sup>4</sup> With respect to COBRA, for example, its design hypothesis was premised on the fact that “increasing the stream of benefits that flow from wildlife conservation to communities will change the attitude of rural communities towards wildlife conservation from negative to positive” (Queiroz, n.d.). It is because of this reasoning that reluctant states

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<sup>2</sup>As for wildlife, the question of land tenure is controversial. While individuals or communities can have title to land, the phenomenon of eminent domain, and the privileging of conservation as a category defining land classification, renders the notion of private ownership precarious. The President has powers to transfer a piece of land from one category to another (see URT, 1999a). With specific reference to wildlife, the government can declare certain areas official wildlife habitats, thereby protecting such lands from certain human activities (URT, 1974).

<sup>3</sup>This is not just a prediction; in western Tanzania, communities evaluated the benefit of refugees by ranking decimation of wildlife by the refugees (who used it for subsistence) as the top-most benefit of hosting refugees. This was because communities were now harvesting crops, unlike in the past when their crops would be foraged by wildlife (Whitaker, 1999).

<sup>4</sup>Indeed, the sector project took its abbreviation from its market orientation: CORE: Conservation of Resources through Enterprise.

have been made to recognize CBC initiatives as a model of environmental governance in Africa. The pressure has been exerted by local, national, and international environmental actors. The execution of this model has, however, been contentious, hence the concern of this study.

## **II Statement of the Problem**

Can the state as presently constituted devolve wildlife property rights to the communities so as to engender in them a private property right consciousness that is envisioned in the CBC model? This study advances the thesis that while the state may succumb to pressures for devolution, it is unlikely to devolve such rights to local communities so as to engender in them a private property right consciousness in wildlife. The state's interests in the wildlife largesse, and the social forces it is embedded in, constrains it from devolving wildlife property rights to local communities in ways that would give these communities a private property rights consciousness in wildlife.

Thus, the state as presently constituted cannot devolve wildlife property rights to local communities as envisaged by the proponents of community-based conservation. The two primary factors responsible for this inability are the value the state attaches to its wildlife largesse, and the social forces the state is embedded in. Consequently, a CBC model instituted in that context would expose the resource to predatorial exploitation by local stewards with insecure property rights. The assumption driving this argument is that the state is constrained by vested interests that are so powerful they make devolution

that is acceptable to communities impossible. This aspect of CBC is rarely addressed in the literature.<sup>5</sup>

### **III Literature Review**

While extant literature on CBC is not uncritical of CBC as a model of environmental governance in Africa, the critique concerns itself mostly with issues such as identifying the community in CBC, whether CBC initiatives are really involving and benefiting communities, and whether communities can actually execute their conservation mandate (Watts, 2004; Coffman, 2002; Agrawal and Gibson, 1999; Gibson, 1999; Songorwa, 1999a; Bill, 1995; Wells, 1994). There is less focus on the issue raised in the paragraph above. The classic statement of the capacity of a community to manage its resources made the case that the state is not the only way; nevertheless, the question of edging out the state was not within the scope of the study (Ostrom, 1990). Subsequent studies that looked at this possibility (Gibson, 1999) suggested that, far from withdrawing from the arena of environmental governance, state functionaries would construct wildlife policies that, though they may be presented in the name of communities, would actually seek to entrench the interests of the conservation elites. Gibson thus suggests that incorporating the state in the study of devolution of property rights to local communities is a fruitful way of inquiring into the relevance of CBC as an environmental governance model.

The question of the role of the state in Africa's development generally has been the focus of major attention. The verdict, which is also largely responsible for inspiring claims for the institution of CBC, has been that the state has performed dismally as a manager of development, and especially capitalist development (see, for example, Nyang'oro, 1989;

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<sup>5</sup>Gibson (1999) is perhaps the foremost exception to this observation; another one who could be read in the same trajectory is Schroeder (1999).

Mbaku, 1999; Tandon, 1982; Leys, 1975; Ake, 1996). Among the emerging issues here is whether the state in Africa actually ever had an opportunity to execute its social contract with its inhabitants, or whether it merely remained a theater of struggle with the dominant forces in society, hijacking its capacity to execute its Weberian mandate (Nyang'oro, 1989; Babu, 1981; Herbst, 1990). This question, variously cast in terms of state autonomy<sup>6</sup>, is central to defining the environmental governance regime in Africa. The conservation sector is one of the sectors where the state's presence has been visibly weak, while external actors retained dominance even after independence. This was largely because the emerging African governments were reluctant to expend resources on conservation in light of other more pressing demands (see, for example, Kabiri, 2006; Leakey, 2001). Implied in this arrangement then is the question of whose agenda held sway in the conservation sector.<sup>7</sup>

While the first two decades of independence in Africa were characterized by African governments being relatively or nominally in charge of their agenda, this situation ended with the rise of neo-liberal policies fronted by the Bretton Woods institutions during the 1980s. Donor agencies began to dictate policy in almost all the major sectors, the environmental sector included. The World Bank's "Ten Principles of New Environmentalism", for example, explicitly claim that the local non-state actors are better than government officials in identifying priorities for action and in carrying environmental projects through to completion (Steer 1996). It is against this background that external agencies sponsored CBC as a model of environmental governance (Wells 1994/5, US sub-

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<sup>6</sup>On the question of the autonomy of the state generally, see, for example, Evans, 1995, 1985; Block, 1977; Fatton, 1988; Krasner, 1984; and Tandon, 1982.

<sup>7</sup>Neumann's study (Neumann, 1998) is a foremost statement on this question, particularly with respect to the colonial era, and the same can largely be reproduced for the post colonial era.

committee 1996, Steer 1996, Agrawal and Gibson 1999, Schroeder 1999). Various studies cite the tendency of donor agencies to tie funding for projects to the incorporation of local communities in the environmental governance structures (Western, 1997; Songorwa, 1999a; Gibson, 1999; Leakey, 2001; Suzuki, 2001; Dzingirai, 2003). This phenomenon of overt donor conditionality has exposed the state to the vagaries of social forces to such a degree that its autonomy has become compromised.<sup>8</sup> Within this context, the role of the state in environmental governance has become problematic.

Scholars and conservation practitioners hold divergent positions on the role of the state in environmental governance. While the view that the state should give way to communities is popular among proponents of CBC, there is also the view that a strong state is critical to the governance of the environment (Leakey, 2001; see also Eckersley, 2004)<sup>9</sup>. The convoluted way in which global environmental discourse conceptualizes the state and biodiversity governance shows that the state is, nevertheless, to be edged out of the environmental arena. While some pronouncements at the global level have wished to privilege the position of local communities in environmental governance, they also shy away from explicitly calling for an exit of the state. Hence, these pronouncements also end up assigning the state the role of a guardian of the environmental agenda. Thus, it becomes difficult to decipher what exactly are the rights of the state and the rights of communities. In Our Common Future (WCED,

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<sup>8</sup>See, for example, Whitaker (1999:185), whereby in the Ministry of Home Affairs in Tanzania, nearly a half of the civil servants were on the pay-roll of NGOs or IGOs, the very organizations they were supposed to be overseeing.

<sup>9</sup>In a public seminar on the proposed Environmental Act of Tanzania, a former state administrator who was now an MP differed with some members of Civil Society who had argued that the role of the state should be minimized in the act. He narrated an experience he had while trying to enforce certain environmental regulations regarding car washing on river banks. He observed that he only succeeded after a heavy confrontation between administrative forces and the members of the public involved. To this extent, he averred that at certain times, to secure certain environmental outcomes, a strong state would be imperative.

1987), for example, decentralization of the management of natural resources upon which the locals depend was called for; decentralization entailed “giving these communities an *effective say* over the use of these resources” (emphasis mine) (WCED, 1987:63). Yet, at the same time, states are held responsible to their citizens and to other states in maintaining ecosystems and related ecological processes vital for the functioning of the biosphere. To this extent, they are charged with the responsibility of reviewing programs that degrade and destroy species’ habitat (WCED, 1987:163, 331). In this case, it is difficult to see how one can reconcile the “effective say” of local communities and the responsibility that states have. It is such scenarios that create the contradiction alluded to by the Matabele chief cited elsewhere in this study. Indeed, under the famous CBC as represented by the CAMPFIRE project in Zimbabwe, communities’ proposed projects are scrutinized and dismissed by District Councils (Dzingirai, 2003). Yet, given the UN instruments cited above, can the District Council be reprimanded?

The confusion regarding the status of the state in environmental governance was reproduced again in the Earth Summit at Rio in 1992. While the summit called for rule-making by local authorities and communities, and emphasized the involvement of individuals, it simultaneously held that the successful implementation of Agenda 21 was “first and foremost the responsibility of government” (UNCED, 1992, Agenda 21: ch. 8; see also Auer, 2000). Thus, the failure to demarcate clearly the boundary between state and local communities in the governance of natural resources pervades the thinking of the global actors, thereby leaving the terrain of environmental conservation with a situation where both parties can legitimately anchor their claims to the governance of these resources to global norms on environmental governance. This indeterminate situation also emerges in the



literature on communities, property rights and biodiversity as well (see, for example, Kameri-Mbote, 2002).

Kameri-Mbote (2002) argues for devolving “real power by states and local authorities to local communities”. To this extent, she avers that policies “that deny such communities access to resources in the name of conservation or seek to teach them how to live with resources in terms that they do not understand should be eliminated” (Kameri-Mbote, 2002: 184). The current study is interested with the proposition of whether such prescriptions as Kameri-Mbote advances are feasible, given the nature of the African state extant. Kameri-Mbote does not address this question. Indeed, the proximate observation she makes towards this end only confounds the issue. In stating the relationship that should characterize the state and local communities vis a vis the governance of natural resources, she presents a template that the state would be comfortable with, but the communities would be suspicious of. Kameri-Mbote avers that,

The role of the state as the guardian<sup>10</sup> of the public interest would still subordinate the rights of communities, local authorities and individuals to the general interests of the country to sustainably manage wildlife resources and entitle the state to intervene in situations where the property owner’s activities threaten the existence of the wildlife resources (Kameri-Mbote, 2002:184).

There is certainly a patent problem in a language that promises “real power” yet the same community is “subordinate,” and alludes to some vague, if not controversial, benchmarks

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<sup>10</sup>The notion of state as guardian was actually invoked in Mali to justify state claims on the governance of natural resources. Mali’s 1994 central planning unit for environmental activities stated that “the State should behave as a good father who assists, advises, and controls” (Degnobl, 1995:10, quoted in Ribot, 1999:53).

like “general interests of the country”<sup>11</sup>, and sustainable utilization. These benchmarks are easy to pronounce, but not to fathom.

With respect to sustainability, for example, the entire debate around CITES and the regulation of ivory trade divides international actors into those who think it is sustainable, while others think it is detrimental to the elephant (see, for example, Hill, 1993; Bonner, 1993; Western, 1997; Leakey, 2001). Hence, to unleash on communities a state armed with such weapons as superintending the sustainability of utilization is the same as telling the state it can have its way. Thus, the state should have no problem with Kameri-Mbote’s prognosis, but communities would. On the basis of Kameri-Mbote, the state may not be expected to devolve property rights to the locals except on its own terms, even though she would also prefer it to do so on the basis of communities’ terms by not involving itself “...in the affairs of the community” (Kameri-Mbote, 2002: 184). The notion of the state as the guardian of national interest confounds the question of what ought to be with that of what is; it is inspired by the assumption that the state is an honest broker<sup>12</sup>. As will emerge from the case studies discussed here, this is far from being the case. Thus, Kameri-Mbote illuminates well the predicaments besetting a conceptualization of the state in devolution of wildlife property rights. These predicaments become even more pronounced when the state is disaggregated, and viewed as being more than a unitary actor, as is evident from Gibson (1999), and to some extent Songorwa (1999a).

In Gibson (1999), the struggle for the devolution of wildlife property rights involves not just the state versus local communities, but also factions of the state (bureaucrats and

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<sup>11</sup>See, for example, Rousseau on the problem surrounding the notion of the common good (Rousseau, 1950).

<sup>12</sup>Bates (1983) argues that the social welfare maximizing model of state policymaking can be misleading.

politicians). Gibson shows that in Zambia, the wildlife bureaucrats' perceived threat to their control of wildlife property rights was from the higher echelons of the political leadership, not from below, i.e. communities. Therefore, they sought to insulate themselves from politicians. This is unlike the cases in Tanzania and Kenya, where the threat to the bureaucrats is perceived from below: the consequences of successful CBC. Wildlife bureaucrats thus seek to present an image of their indispensability in the wildlife sector. While in Zambia the bureaucrats saw success with CBC as likely to insulate their edifice from being dismantled by politicians because politicians would be reluctant to incur the wrath of communities, in Tanzania and Kenya the bureaucrats see successful CBC as a sure way of dismantling the wildlife bureaucracy (given the context of structural adjustment programs where states are under pressure to downsize the bureaucracy and disperse its duties to the private sector)<sup>13</sup>. In Kenya and Tanzania, therefore, wildlife bureaucrats seek to establish their indispensability among politicians in order to secure their preferences against the communities. Thus, while the study of Zambia directs us to look at individuals, the cases of Kenya and Tanzania pose the question of why bureaucrats in Kenya and Tanzania were unlike their counterparts in Zambia with respect to their response to local pressures for devolution, more so given that in all cases, the political trajectories are relatively similar.

On the other hand, Songorwa (1999a: 40) rightly observes that the CBC "...approach assumes that both the government in its totality and the relevant individual officers agree to transfer ownership of, and management responsibilities for, wildlife to communities." With respect to Tanzania, however, a case can be made that the government at a macro level has

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<sup>13</sup>Tanzania's Minister in charge of wildlife at one time alluded to this point in Parliament (Meghji, quoted in the Daily Mail newspaper, 30/07/1998 (Songorwa, 1999a: 346)). See also, Schroeder (1999) where it is suggested that African governments may be seen as conceptualizing CBC as a tool of managing the Bretton Woods' imposed structural adjustment programs.

agreed to devolve wildlife property rights to local communities. Hence, Songorwa's contention as to why governments may be reluctant to devolve does not capture the Tanzanian case (otherwise, the government would, like its Kenyan counterpart, have derailed the devolution process at the level of policy formulation). Yet, in spite of this acceptance of a CBC-friendly policy by the government, devolution of wildlife property rights to local communities is still problematic. This study is interested in the Tanzanian question as one of failure of devolution in the context of a policy that is acclaimed by both state and communities as CBC friendly. Is it possible that the state, having been vanquished into subordination by donor conditionalities, publicly announces one thing, but bungles implementation as a tactic of resistance? (see, for example, Scott, 1990, 1985.) Or is the state sincere, but constrained by other forces holding it hostage?

In light of the foregoing, it can be observed that, while extant literature is heavy on the limitations of a CBC model of environmental governance, this caution is largely founded on technical imperatives. It is unclear on the question of whether the envisaged CBC model would in the first instance be initiated. This study pursues the line that a CBC model of environmental governance would still be problematic even if such issues as community identification and capacity were attended to successfully. The principal contradiction in the execution of a successful CBC model is the factor of state willingness and incapacity to devolve wildlife property rights to local communities. This is the concern of this study.

#### **IV Study Objectives and Hypotheses**

The objective of this study is, therefore, to demonstrate that there is a fundamental flaw in pushing CBC as the viable environmental governance regime given the nature of the

African state extant. While the proponents of the CBC model are clear on the failures of the state governance of natural resources and the merits of CBC, there is a lacuna on the question of whether that clarity implies state capacity or willingness to disperse environmental governance authority to the local communities. Yet, such a quality is germane if viable devolution is to be obtained. Consequently, this study, by focusing on the interests of the African state in the wildlife largesse and the social forces within which the state is embedded, seeks to demonstrate that it is difficult for it to deliver a devolution strategy that would yield the promise of CBC as put forward by its proponents.

The underlying motivations for this consideration are that the conditions under which an ideal environmental governance regime can be constituted would entail the state guaranteeing security of wildlife property rights to communities. Such rights would be devoid of ambush through administrative fiat. This pre-condition would in turn generate conditions under which a devolved environmental governance regime (CBC) would generate viable (anticipated) environmental outcomes: decision-making on resource use would rest with the communities who would be without fear of a state that would discard institutions and unilaterally distort the transaction costs (North, 1990). The constitution of such a regime is currently problematic because the state, a key actor, has vested interests in the resource (Ascher, 1999), or it is trapped by vested interest groups that are more powerful than the communities (Gibson, 1999).

In light of the foregoing, this study's evidence supports a further hypothesis that, one, there will be inadequate devolution of environmental governance authority to locals; and, two, communities will resist anything less than total devolution, but depending on the level (and direction) of their politicization (intervening variable), they could concede.

Nevertheless, the future of environmental security through community stewardship is quite tenuous. The foregoing objectives and hypotheses are conceptualized against a theory of property rights.

## **V Theory: Private Property Rights and the Conservation Impulse**

Hence, in a class-divided society, if “ownership” is to have anything to do with relations of production (class relations), then someone owns something if, and only if, he can use it for production without impediment (Nyong’o, 1981: 23).

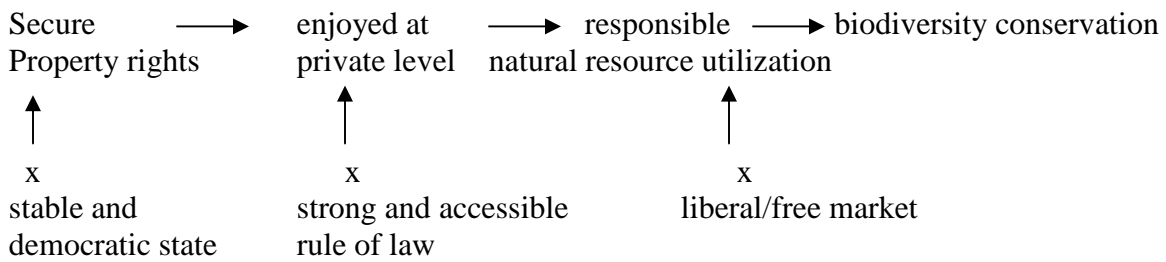
Property rights regimes can be grouped into three broad categories: the open-access, the state/public, and the private property rights regimes. The first two are discounted as viable approaches to environmental conservation, leaving private property rights as the preferred resource governance regime (see, for example, Hardin, 1968; Ostrom, 1990<sup>14</sup>). The private property rights regime is the one that informs the CBC model.

The CBC environmental governance model can be situated within a property rights regime stipulating that secure property rights, enjoyed at a private level, are better able to inform a responsible utilization of resources and thus serve as an incentive for conservation of resources. A regime of such secure property rights is more reliable, the more the polity is a stable and a democratic one. Similarly, the enjoyment of such property rights at the individual level generates a sense of confidence among resource users if there is a strong rule of law that is also accessible. Also, the utilization of resources would be more responsible if the market for the resource is a liberalized one, such that resource users can be certain that

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<sup>14</sup>Ostrom’s CPR is hereby being treated as a private property approach in light of McKean, 1992, in the sense that a community of people own the resource to the exclusion of others (hence privatization).

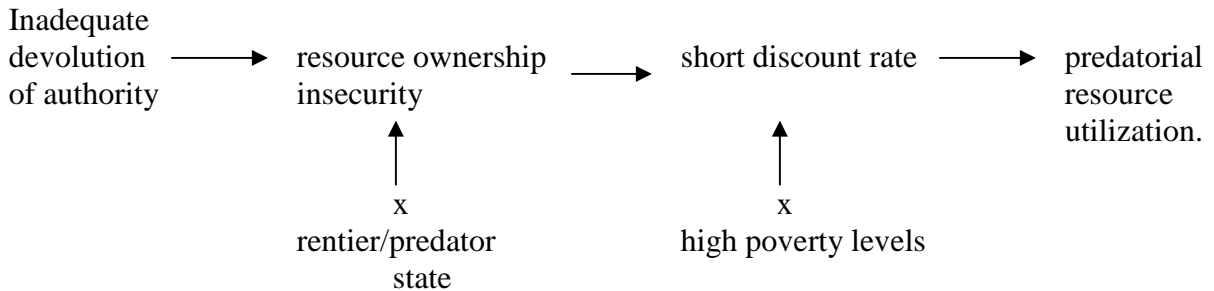
they are getting the best value for the resource that the market can offer. In that case, they would have no incentive to over-harvest, but instead they would have an incentive to re-invest in the production of the resource. If such a condition were obtained, then there would be grounds to expect that resource users are going to engage in the conservation of resources because they have a selfish interest in the survival of the same. The foregoing story can be modeled thus:



The property rights arrangement described above implies that the state would have to concede property rights to resource users, thereby generating a private property rights regime. Property rights are defined as enforceable instruments of society that specify the ways in which particular resources may be used and assign costs and benefits (Demstz, 1967). When that specification is done at a private level, then a private property rights regime can be said to be in vogue. Private property rights mean that the private actors' rights to the resource they own is exclusive and voluntarily transferable (De Alessi, 1980, Nyong'o, 1981; Anderson and Hill, 2004). In light of this, it is then possible to understand what is happening when, for example, a Matabele chief laments that they are always told that they can make decisions about wildlife and decide how to use their own resources, "but when we want to kill problem elephants, we are told by district council that it is not possible because the quota does not allow it" (Bonger, 1999:279-280). The cases studied here from Kenya and Tanzania are largely inspired by similar sentiments. Simply, there is a disjuncture between

the theory and practice of privatization of the resource. This can have perilous effects on biodiversity conservation.

If resource ownership is not devolved to a level where private actors feel they have determinate control over the resource, this would produce a sense of insecurity of resource ownership. This sense of insecurity informs a short shadow of the future because resource users live in fear of dispossession at any time. The result is a utilization of resources that assigns a high premium to the present, in contrast to the future. Such an appropriation of natural resources exposes them to over-consumption, thereby heralding a regime of unsustainable resource utilization that translates to environmental degradation. This scenario can be modeled thus:



The above formulation informs the inquiry of whether the state can devolve to the community such authority over natural resources so as to make the community develop an affinity with the resource, thereby leading to the outcomes (environmental sustainability) that are associated with community governance of environmental resources. This formulation produces a good fit between the theory and the thesis.

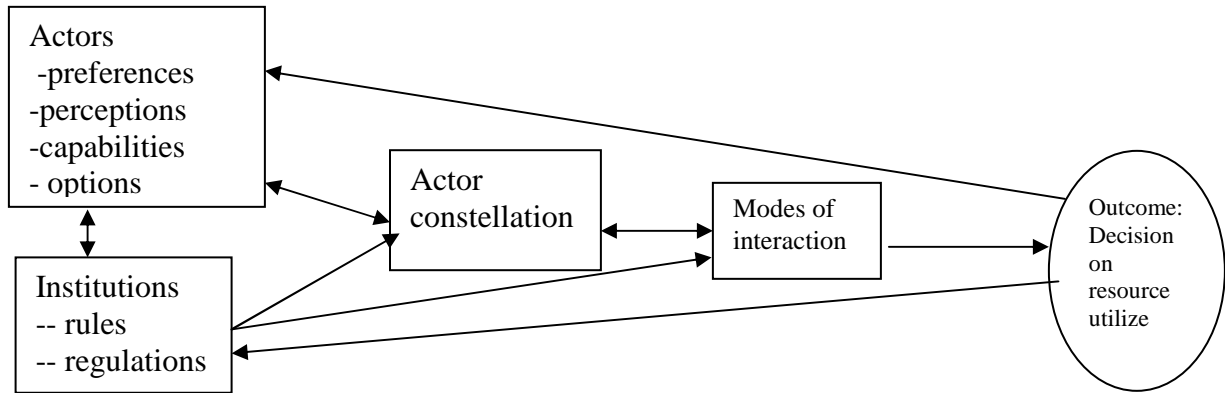
If the research question is regarding whether the state as presently constituted can devolve property rights to communities as to generate a sense of private property right



consciousness, then a theory based on (in)adequate devolution of authority on property is relevant. If the answer to the question on the state is answered in the negative, then it would have the implication that a CBC model of environmental governance will lead to predation and, therefore, that it is not the most appropriate regime of environmental governance. On the other hand, if the question of the state and devolution is answered in the affirmative, then it would mean that communities will have a sense of ownership of resources and, therefore, that they are bound to steward them responsibly, thereby making CBC an appropriate regime for environmental governance. To this extent then, actors and institutions are central; hence, the inquiry was executed within the framework of actor-centered institutionalism.

## **VI Theoretical Framework: Actor-Centered Institutionalism**

Since this study raises questions dealing with the behavior of the actors involved in environmental governance, Scharpf's (1997) actor-centered institutionalism framework is a useful tool for organizing our inquiry. This framework explains social phenomena as the outcome of interactions among intentional actors, but these interactions are structured and the outcomes shaped by characteristics of institutional settings within which they occur. The elements of this framework (see figure 1) entail a consideration of, among others, the institutional settings and the actors involved, including their perceptions, preferences, and capabilities; the actor constellation (that describes the potential of conflict); and modes of interaction (through which the conflict of actor constellation is to be resolved, which could either be: unilateral action, negotiated agreements, voting, or hierarchical directives). The framework was valuable in imposing conceptual and empirical clarity.



(Figure 1: Actor-centered institutionalism framework)

In this approach, an attempt is made to examine the role of the individual or groups of individuals as the causal force behind given processes. This applies as well to the question of the state, such that the state is not necessarily treated as a unified actor (see, for example, Marks, 1997: 23). Rather, state bureaucrats and politicians are conceived as different sets of actors whose interests are sometimes at variance. The state is, however, also seen as a theater of struggle in the sense that it provides the institutional contexts in which actors pursue their goals (Marks, 1997: 34). This conception is particularly evident in the case of devolution of property rights because actors struggle to either capture, or influence the transformation of, the regulatory mechanism governing the wildlife estate. It is this regulatory mechanism that in the final analysis informs decisions on resource utilization. The framework was quite helpful during data collection in the field.

## VII Field Methodology and Data

The data used in this paper were collected during extensive field research done in Kenya and Tanzania during 2000, 2003, and 2004. Data were gathered through oral interviews and

participation in seminars and workshops, as well as from NGO and government documents. Local-level oral interviews were conducted among the Maasai of both Kenya (Amboseli and Maasai Mara) and Tanzania (West Kilimanjaro and Loliondo, North-east of Serengeti National Park). These are sites of heavy NGOs activity because of their endowment in wildlife resources and concentration of the wildlife protected areas network. Respondents from these sites were sampled among the youth, men, and women. Village leaders and other opinion leaders were also interviewed, as were government officers, particularly at the district level. Views of senior government officers were also noted during seminars and workshops addressed by these officers. More data were collected from documents in archives of NGOs, government offices, and from media archives. Secondary literature on NGOs and state-donor relations in Africa was also utilized.

The conceptual focus of the fieldwork was the phenomenon of community-based conservation in which communities living with wildlife would have wildlife property rights devolved to them. In both cases, clear groups of actors were manifest, and the struggle was centered on the kind of institutions to be put in place, in light of the existing institutions. Aspects of data sought included who the actors were, their goals, the coalitions, and their interactions.

In Tanzania, the process of executing CBC entailed the creation of Wildlife Management Areas (WMAs) through aggregation of several villages. The key actors participating in the process included the villagers, wildlife bureaucrats, politicians, and NGOs. NGOs got involved because the government appointed some of them to facilitate, in concert with the district wildlife officers, the implementation of WMAs. Other NGOs stepped in on their own initiative to assist the communities. In Kenya, communities hosting wildlife in their lands

mobilized themselves as district wildlife forums and formed an umbrella body (Kenya Wildlife Working Group, KWWG) to pressure for the review of the wildlife legislative framework so that the resultant devolution would be anchored in law. As the lobbying for review got under way, NGOs participated, lobbying for or against certain preferred legal positions. While communities won at the parliamentary level, anti-utilization lobbies nevertheless triumphed at the executive level. Again here, the key actors were thus the communities (as represented by the wildlife forums), politicians, wildlife bureaucrats, and NGOs. On the basis of these cases, the theme of the CBC model as problematic is examined, as shown in the following chapters.

## **VIII Organization of the Study**

In the following chapter, the obstruction to the implementation of a successful CBC model by the bureaucrats in Tanzania's wildlife department is analyzed. While there is clear evidence supporting the premise that it is difficult for the state to devolve property rights to communities, there is simultaneously evidence that the failure to execute a CBC model in line with what the communities would like is not deterministic. This aspect is illustrated in Chapter Three, whereby it is shown that some communities can nevertheless concede to work with the property rights defined for them by state bureaucrats. Chapters Four and Five examine the struggles for property rights in Kenya. The former looks at the attempts to co-opt communities by devolving property rights to local communities without changing the basic institutions, such that wildlife bureaucrats interacted with communities in their own terms. Communities found this approach unacceptable, and therefore initiated a

parliamentary legislation that would anchor in law the devolution of wildlife property rights to communities. Chapter Five examines this initiative. The conclusion then follows.

## **Chapter II**

### **Devolution of Property Rights in Wildlife: Bureaucratic Obstacles to Policy Implementation in Tanzania**

#### **I Abstract**

Community-based conservation (CBC) provides the best response to the crisis of wildlife governance in Tanzania. Its successful implementation would make Tanzania richer both economically and in terms of its biodiversity. Overt pronouncements by various actors attest to this observation. The implementation of the CBC model is, however, at an impasse. The wildlife bureaucrats responsible for the implementation of the CBC model are sabotaging the devolution because it runs counter to their interests. This chapter explains how and why wildlife bureaucrats were able to succeed in sabotaging the government policy of devolving wildlife property rights to local communities.

#### **II Introduction**

In the previous chapter, it was argued that executing a successful Community-based conservation (CBC) model would be difficult given the character of the extant state in Africa. It was hypothesized that the state is unlikely to devolve wildlife property rights to local communities in a way that would engender a private property right consciousness among them. This consciousness, specifically, would give wildlife the same communal value as private property. In this chapter, it is argued that bureaucratic interests are the foremost obstacle to the implementation of a successful CBC initiative in Tanzania, the national policy in favor of CBC notwithstanding.

It is argued that given the land tenure regime in existence, the claim that CBC provides the best response to the crisis of wildlife governance in Tanzania is tenable. Moreover, it is further posited that its successful implementation would make Tanzania richer both economically and in terms of its biodiversity. Overt pronouncements by various actors, including the government of Tanzania itself in its Wildlife Policy of 1998 (MNRT, 1998b), acknowledge this proposition. Nevertheless, the implementation of the CBC model is at an impasse. The wildlife bureaucracy responsible for implementing the CBC model is sabotaging the devolution because it runs counter to their interests. They adopted a strategy that, in the estimation of many commentators of the wildlife sector in Tanzania, including the target local communities, was inimical to the spirit of the government wildlife policy.

The behavior of the wildlife bureaucracy suggests that it does not want to give up its control over wildlife. It has been about seven years since 1998, when the wildlife policy was adopted, and yet its implementation is still doubtful. This means that the wildlife bureaucracy can be seen as having succeeded in tactically delaying the devolution of property rights over wildlife to local communities. The question then is how to account for the success of the wildlife bureaucracy in sabotaging the government policy of devolving wildlife property rights to local communities.

This chapter argues that the wildlife bureaucracy crafted a devolution strategy that would either be unacceptable to the communities or, if accepted, would be such that the wildlife bureaucracy would still enjoy immense influence in the wildlife sector. The bureaucrats were able to do this because of the nature of the political patronage in vogue in Tanzania, and due to lack of job performance accountability. The former incapacitates politicians' ability to confront the bureaucrats on behalf of the communities. The latter deprives wildlife

bureaucrats of any incentives to contract with other actors for a conservation regime in which the piece of the pie could be bigger with more benefits to society, but perhaps with less private gains for bureaucrats. Hence, bureaucrats can gerrymander the implementation of devolution, and procure outcomes favorable to them.

The question is then raised as to why the government should bother producing regulations that are unacceptable to communities, instead of just rejecting devolution altogether. It is demonstrated that there are two processes at the governmental level that are occurring. One is political and the other is administrative. The former is executed within the broader political economy of Tanzania; hence, the government is compelled to adopt a policy with a popular face. The latter process is administrative, executed by bureaucrats with no immediate accountability to the forces fronting for devolution, hence the leeway they have in gerrymandering with devolution. In the chapter's conclusion, it is argued that this chapter demonstrates the need to focus on the structure of the state in Africa at a broader level, instead of targeting piece-meal sectoral reforms.

In the following section, the chapter discusses the wildlife sector and Tanzania's socio-economic development. It demonstrates the need for a policy change with the implication that bureaucrats with a public interest persuasion should look forward to devolving wildlife property rights to local communities. The next section looks at the limitations of the proposed devolution model. It shows how the bureaucrats obstructed devolution by either ignoring or exploiting contextual factors, thereby predisposing communities to reject devolution. The guidelines for devolution that bureaucrats issued are discussed, showing why communities found them unacceptable. The last section accounts for the success of the bureaucrats in obstructing devolution. It situates bureaucrats within the transformation of



property rights literature and shows the basis of their success so far. The conclusion then follows.

### **III The Wildlife Sector and Tanzania's Socio-economic Development**

Tanzania is a non-industrialized economy that relies heavily on its natural resources. Among the significant natural resources is wildlife, which supports the economy through the tourist sector. Both government policy and empirical evidence attest to the significance of a properly managed wildlife sector.

The government has projected that the contribution of the wildlife sector to the GDP can be raised from 2% to 5%. The centrality of wildlife as a resource that “can be used indefinitely if properly managed” (MNRT, 1998b:9) is recognized. Wildlife can be used “to reduce hunger by providing food and to generate foreign exchange” (MNRT, 1998b:17). The government has proposed to use the wildlife sector to promote rural development by creating Wildlife Management Areas (WMA):

where local people will have full mandate of managing and benefiting from their conservation efforts, through community based conservation programs. (And) The private sector will be encouraged to invest in the wildlife industry (MNRT, 1998b:34).

The impact of wildlife investments in the economy is already being realized. Pronouncements by those in authority and the experiences of certain communities are a testimony to this impact.

## **Empirical Evidence for the Capacity of the Wildlife Sector**

Recently, the minister in charge of wildlife spoke “of the safari hunting industry as a major source of foreign currency to the government and individual operators” (Semberya, 2005). Wildlife department officers claim that the department is among the top three departments in providing revenue to the Treasury (O. I.). This is consistent with the fact that the department’s expenditure is less than half of what it collects from hunting licenses alone (USAID/TZ- W/D, 2001:14).

The same story emerges from villages that have leased land to tour operators. The revenue generated from these ventures has enabled these villages to afford social services that have placed them ahead of other villages in the region (Ololosokwan, 2003; Nelson, 2003; O.I; ACC, 2004). These tourist ventures exemplify the power of wildlife to catalyze rural developments.<sup>15</sup> The Wildlife Division gives a portion of tourist hunting fees to districts with tourist hunting blocks. Monduli district, for example, relies on this remittance for 40-60 % of its annual budget (O.I.; Nelson, 2003). Without revenues from wildlife investments, such districts could suffer huge budget deficits.<sup>16</sup> Actors in the wildlife sector point to similar ventures not yet exploited, partly because there is no enabling environment

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<sup>15</sup>Unfortunately, these ventures have no support from the government, whose officers have declared them illegal because these ventures are in tourist hunting blocks. Nevertheless, some of these ventures are sanctioned by the District Council, which also receives a percentage of the income. When I asked a game officer why the District Council should then claim a share, he told me that he has told the district council that they are receiving income from illegal activities (see, for example, MNRT, 2002a; TNRF minutes of monthly meetings, 2005). Early in 2006, one of these ventures lost in a legal suit (but could appeal the verdict) and was supposed to close shop.

<sup>16</sup>There is conflicting opinion about whether the district councils are actually supposed to use these remittances to service their budgets; there is a claim that they are supposed to send them immediately to the villages, but they do not do this. In one seminar, a Member of Parliament expressed the latter position.

(see, e.g. Nelson, 2003). Also, degradation of wildlife species also threatens the wildlife sector and these ventures.

### **Wildlife Degradation and the Roots of CBC**

Wildlife is now under increasing threat. The government's wildlife policy acknowledges that the sector is confronting such problems as "Loss of wildlife habitats to settlement, agriculture, grazing, mining, and logging" and "Escalating illegal wildlife off-take and trade" (MNRT, 1998b:7). Other government policy documents, for example, the Forest Policy (MNRT, 1998a: 35) attest to the same problems. Similarly, fears of wildlife degradation are corroborated by actors in the industry, such as tour operators. Some operators related to me that in the past, game was abundant as soon as clients left the vicinity of urban settlements. Now they go all the way to the parks before coming across wildlife. One tour operator claimed that once there were areas where he could not drive after 6 pm for fear of hitting wildlife crossing the road, but nowadays, one does not see even a rat. Interviews with villagers have yielded similar stories.

Wildlife degradation is partly a result of loss of wildlife habitat due to human activity (MNRT, 1998b:7), and also due to the practices of the wildlife department. The department's management of tourist hunting is thought to accelerate wildlife degradation as hunting licenses are issued almost haphazardly. In a question and answer session during a villagers' seminar on natural resources, the wildlife department personnel confirmed these fears:

(Villager) Question: "Is there information on the number of wildlife in the hunting blocks so that the Department of Wildlife knows how many can be hunted?" (District Game Officer) Answer: "No, this information is not

available and we really don't know how much wildlife there is left in this area." (SCF, 2002).

Other weaknesses in the management of the hunting industry include licensing the hunting of animals in areas those animals do not inhabit. As a government commission of inquiry on corruption noted:

...the Royal Frontiers Company was given a quota to hunt Topi and Gerenuk in the Mkomazi areas while these animals are not available at all in the area (Warioba Commission, as quoted in Nshala, 1999:17).

The government and its critics, therefore, concur that there is a problem.

It is against this background that the merit of involving people living with the wildlife is emphasized. Communities are thought to have better knowledge of the wildlife habitat and would know the predicaments besetting local wildlife. Armed with their knowledge, they can husband wildlife, but they would do this only if they benefit from the resources. The justification for CBC is premised on this idea. Communities and the government concur that devolution of property rights over wildlife to communities would fill the management void of governmental ineffectiveness. The implementation of this devolution has, however, been controversial.

#### **IV Limitations of the Proposed CBC Model**

Communities looked forward to the implementation of devolution of property rights to wildlife. Communities had invested a lot in the clamor for devolution during the years when the state was the sole legal claimant to wildlife. The issuing of a CBC-friendly wildlife policy met their expectations. Community expectations were nevertheless shattered when the wildlife division released the guidelines on devolution. Communities have resisted the implementation of devolution because they find some regulations in the proposed devolution

strategy undesirable.<sup>17</sup> Before looking at the issues in the guidelines that rendered the proposed CBC model contentious, I review the context in which the guidelines were issued in order to throw light on what may have fuelled the controversy over devolution. This review of context and analysis of the WMA regulations is intended to motivate the idea that the wildlife bureaucrats designed regulations in such a way that these regulations would discourage communities from participating in the WMA project.

### **WMA Guidelines in Context:**

#### **Era of Changing Political Values: Rise of Civil Liberties**

One of the key issues at play in the controversy is that WMAs were being implemented using a mind-set that was perfected during the era of state authoritarianism. When Tanzania initiated villagization (using villages as units of rural settlement) in the 1970s, the process was supposed to be people-driven, but later on, coercive strategies by the government became dominant (see, for example, Scott, 1998). Since the advent of both political and economic reforms in the 1990s, citizens are now more conscious of their civil liberties, even though diverse structural odds make accessing those liberties difficult. Communities are now sensitized to their rights, partly due to NGOs activity (see, for example, SCF, 2002; Pingos, 2004; Kallonga, Nelson, and Stolla, 2003). When communities are able to access these rights, then they may resist government proposals they consider undesirable.

The WMA have been victims of this new dispensation. This is not to suggest that the bureaucrats were ignorant of this possibility. One could argue that bureaucrats created an implementation program that would ensure that WMA could be rejected so that the

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<sup>17</sup>Some communities have, however, shown willingness to accept WMA. But they are also divided, with those against being more militant (see the following chapter).

bureaucrats' personal interests in wildlife would remain as they were (see sec. III c below). Thus, recognition of the extant political values by both actors may account for their behavior. The communities knew they could appropriate the widening political space to reject a government project that they do not like. Consequently, as will be shown below, some of them rejected the WMA project after they concluded that the WMA regulations are designed to serve the interests of the wildlife division. The bureaucrats, on the other hand, knew this character of the communities and thus sought to exploit it for the bureaucrats' own ends. They designed an implementation project that communities would find difficult to accept and hence, the status quo would continue.

The proposition that the bureaucrats designed the rejection of WMA looks tenable in light of the problems that WMA regulations ignited. The WMA regulations touched the question of land. The drafters of WMA regulations should have known that land issues are very sensitive given the legacy of wildlife protected areas (See, for example, Brockington, 2002; Shivji and Kapinga, 1998; and Neumann, 1998). WMA regulations were also being issued contemporaneously with devolution in forestry. The example set by the devolution in the forestry sector provided communities with a powerful alternative approach of how devolution ought to be implemented. The land and forestry sectors thus served as a catalyst for critiquing the WMA regulations.

## **Inter-sectoral (but avoidable) “Liabilities”:**

### **The Land Question**

WMA guidelines raised issues that suggested that villagers might lose land through the WMA project. According to the legal instruments governing land,<sup>18</sup> villagers do not own land; they only have occupation and user rights. Landownership is vested in the President, and villagers are only beneficiaries (Gastorm, 2003). The requirements by the WMA guidelines that livestock be excluded from land set aside for wildlife (see sec. III b) made communities suspect that WMA were another tactic to expropriate land (O.I.; Loliondo, 2004; Pingos, 2004). Such fears were heightened when government officials began reminding the villagers who were rejecting WMA that villagers actually owned no land (Oloipiri village minutes). Communities fear that if government opinion was that communities do not own any land, and yet the government can declare any land wildlife habitat, then to the villagers, developing a wildlife habitat in their lands was the surest way of enticing the wildlife authorities to annex lands already occupied by villagers.

Villagers would be expected to feel vulnerable to loss of land if they have a successful WMA. Such feelings are not without historical precedent. Villagers relate the current experiences with WMA to prior expropriation of Maasailand for wildlife, whether it was in Ngorongoro, Serengeti, or Mkomazi (see, for example, Brockington, 2002; Shivji and Kapinga 1998). Moreover, the phenomenon of Game Controlled Areas (GCA) could have heightened these suspicions. The minister responsible for wildlife can declare a GCA on any

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<sup>18</sup>The Land Act (URT, 1999a); Village Land Act (URT, 1999b); Land Acquisition Act, 1967 (Gastorm, 2003). The contradictions in governance emerge when one considers that the government issued the Forest Policy, in which it recognized the critical role played by security of land tenure in satisfying “long-term objectives of environment protection” (MNRT, 1998a:4); yet in the following year, it passed two land acts that fail to confer this tenure on villagers. If anything, the acts seem to better serve the interests of those claiming villagers own no land.

land. Even when such a declaration affects village land, the minister does not consult the villagers. Within a GCA, the director of wildlife can assign a hunting block to a hunting outfitter, in which case villagers lose control over land use practices in their village land, contrary to the Village Land Act (no. 5, 1999) (URT, 1999b).

Designing apparently hostile guidelines for a situation characterized by insecurity of land tenure was, therefore, the surest way of investing in their rejection. Furthermore, community suspicion was intensified by the fact that the wildlife authorities were implementing devolution in a way different from that of their counterpart in the forestry sector.

### **Devolution in the Forestry Sector: Any Demonstration Effect?**

Studies of the governing of common pool resources emphasize the role that trust plays in the success of that governance (Ostrom, 1990). Given the history of mistrust between the wildlife sector and the communities, it would be expected that the bureaucrats would be aware of the fact that they needed to show that they are now trustworthy. However, the guidelines that the bureaucrats issued made communities trust the bureaucrats less than before. Devolution of property rights in the forestry sector contributed to this suspicion. While the wildlife division issued a policy communities identified with, but then followed it with a legal regime that was hostile to the promise of the policy, the forest division issued a policy and an act that communities accepted.

The fit between the Forest Policy (MNRT, 1998a) and Forest Act (URT, 2002) is evident. The Forest Policy statement (6) provides that: “Village forest reserves will be managed by the village governments or other entities designated by village governments for this purpose” (MNRT, 1998a: 21). This policy statement is reflected in the Forest Act. The act seeks to



delegate “responsibility for management of forest resources to the lowest possible level of local management consistent with the furtherance of national policies” (Act, Part, II, sec. 3.d; see also 3.b). The act protects devolution of property rights even when a village enters into joint management agreements with the director of forestry. Although villagers are required to submit proposed by-laws to the director for comment, “In the exercise of its functions of managing a gazetted village land forest reserve, a village committee ....shall not be bound to comply with all and any advice of the director” (Act, sec. 36.7; sec. 37 (i) b).<sup>19</sup>

Devolution of property rights in forestry, therefore, let communities evaluate government departments implementing devolution. Consequently, in several fora, communities critiqued the wildlife sector compared to the forestry sector. Communities note the contradiction, and sense the distributional factor in the wildlife sector. A villager participant in a natural resources seminar asked:

I’m surprised because I thought wildlife and forestry were the same, but I can see now that that is not the case. The Forest Policy seems to favour communities much more than wildlife. Why is this? Perhaps the issue relates to the greater amounts of money in the wildlife sector than in forestry (quoted in Kallonga, et al, 2003).

Another participant graded the two policies thus:

I congratulate the forestry sector for making change and bringing real opportunities for benefit to the community level. I would like to request that the forestry sector try to influence the wildlife sector, because due to the differing approaches we are headed for forests without wildlife, which are not real forests at all (Kallonga, et al, 2003).

Thus the wildlife bureaucracy, in designing a devolution project that was diametrically opposed to that issued by its counterpart, the Forest and Bee-Keeping Division, ensured that communities would see the contradiction. The communities certainly did see it, as the above

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<sup>19</sup>See also 37 (3), where villagers are expected to send by-laws to the director and district council, but if these two do not send the feedback within the stipulated time, the villagers can proceed and make the by-laws.

quotations demonstrate. The result was that communities objected to the devolution. The same conclusion regarding the wildlife bureaucrats investing in the possible rejection of the devolution project by the communities results when one looks at the way the market aspect of devolution was designed.

### **WMA Regulations: Betrayal of the Market as the Basis of the Crisis**

The CBC model is an argument about the role of the market in the management of natural resources. Tanzania's wildlife policy provides a good statement of a possible role of the market in wildlife conservation. The policy recognizes the significance of property rights in engineering a wildlife-friendly behavior among communities living with wildlife (MNRT, 1998b:3.2.1, 3.2.2, 3.3.3 iii). The policy seeks to ensure that wildlife competes with other forms of land use by, for example, allowing "rural communities and private land holders to manage wildlife on their land for their own benefit" (MNRT, 1998b: 3.3.4). Towards this end, the policy proposed certain strategies to achieve the foregoing objective. These strategies entailed, *inter alia*,

conferring user rights of wildlife to the landholders to allow rural communities and private land holders to manage wildlife, assisting wildlife ranchers and farmers to become eligible for the same benefits and incentives that the agricultural farming and livestock industry receive from the Government (and) influencing policies such that land of marginal value to agriculture and livestock development (tsetse infested areas) is set aside for wildlife conservation to the best interest of rural communities as a primary form of land use (MNRT, 1998: 3.3.4 v-vi, viii).

These policy statements are market-oriented. It is difficult to see what else a proponent of a market approach to conservation could expect from this policy. Yet, communities have resisted the implementation of this policy, even though they had clamored for such a policy.

The bone of contention is the regulations issued for the administration of WMA. Among the contentious issues are those dealing with investments in the WMA, benefit-sharing, livestock in the WMA, the penalties for infractions in the WMA, and the balance of power politics in the WMA project. If these issues are not resolved, the resultant WMA (if instituted) would be a CBC regime incapable of generating a private property right consciousness that is vital for the proper management of wildlife. The following discussion reviews these contentious issues. The review shows that the wildlife bureaucrats issued regulations that discouraged communities from adopting the WMA project. An explanation that presents itself from the foregoing analysis as to why the bureaucrats should have acted thus is that the bureaucrats wanted the status quo to continue the way it is currently.

#### **Control Over Investments in the WMA: Artificial Transaction Costs?**

The communities resent the fact that any investment in the WMA has to be approved by the wildlife division (see, for example, WWG, 2003). The director also retains the power to withdraw or revoke any investment agreement. The regulations also deny communities the right to transfer their user rights to another party. Communities get the impression that the director wants to micro-manage the WMA. This impression makes communities suspicious. There are questions regarding what, for example, would make the director reject or approve a prospective investor. In case of rejection, who would meet the costs incurred while WMA and the investor were preparing to engage in a contract? One would assume that if an investor has been cleared by the government to conduct business in the country, then communities should be free to decide who to work with.

Similarly, the owner of user rights should be allowed to sell them to whom ever is able to add value to them, provided that communities understand that they will take responsibility for what goes on in the WMA. The involvement of the director introduces what property rights literature refers to as unnecessary transaction costs (Anderson and Hill, 2004: 17-18); this is another deviation from the wildlife policy that promised that “The Government has set clear, transparent and simple procedures for participation in the wildlife based tourist industry, and involvement in other wildlife related activities” (MNRT, 1998b, sec. 5.0). Clarity and transparency are not evident in this case, nor are they reflected in benefit-sharing.

### **Uncertain Benefit-sharing Arrangement**

The bureaucracy reserves the right to determine how benefits should be shared. As of now, the regulations on benefit-sharing present a study in ambiguity. First, benefit-sharing is expected to “comply with circulars issued by the Government from time to time” (MNRT, 2002b: sec. 72). But then the regulations also distribute the WMA revenue thus: 15% to resource development, 50% member villages, and 25% authorized association (leaving out only 10% for communities to expend as they wish).<sup>20</sup> Communities find this regulation suspect since they do not know what the formula will be in the future. Can the director issue a circular directing that money from WMA enterprises be sent to the wildlife division? As of now, he reserves that right. Communities thus feel that they should conduct their business freely and then pay the government its relevant fees just like other business ventures (Loliondo, 2004; WWG, 2003). It appears that the bureaucrats designed the revenue-sharing regulations in a way that would discourage communities from accepting WMA. Given the

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<sup>20</sup>The entrepreneurial logic of this distribution is problematic; revenue-sharing should be based on profit, not the gross, as is the case here. It is also not clear whether the “...from time to time...” circulars would vary the percent distribution, the categories, or both (MNRT, 2002b).

arduous conditions attached to the WMA project, the least one would expect is a revenue-sharing regime that is not subject to administrative fiat. This expectation is doubly justified given that the regulations were, at the same time, attacking the mainstay of villagers' economic activity, livestock.

### **Criminalization of Pastoralism?**

The WMA regulations prohibit keeping livestock in the WMA (MNRT, 2002b, 12th Schedule, sec.2). The prohibition interacts with the question of land and that of penalties (see below, III b iv) to create fear and suspicion. Communities fear that WMA may be a scheme to expropriate their land, and that the government values wildlife more than people and livestock. Communities do not understand why livestock should be prohibited from WMA, given that livestock is already allowed in the Game Controlled Areas, which will be transformed into WMA (Kallonga, Nelson, and Stolla, 2003; Nshala, n.d. b). Communities contend that if land is set aside for wildlife, the question then will be whether the wildlife will be told not to go to the land set aside for livestock. Communities aver that both their history and expert evidence attest to the compatibility of pastoral lifestyle and wildlife conservation. One villager asserted,

The government separated us from wildlife, by chasing us from Serengeti and starting a wildlife protected area, but the wildlife has continued following us up to the villages, and we shall continue to husband them like our livestock (Olemunai Lotiken, in Loliondo, 2004).

The basis of the idea of separating livestock from WMA is thus suspect. Consequently, communities have even had to revisit the name of the project and argued that it does not reflect any community at all. So, they posit that the WMA project should be called

Community Wildlife Management Area (CWMA), or Community Wildlife and Pastoralism Management Area (CWPMA) (Loliondo, 2003). This would, presumably, show that there is an equal interest in people, livestock, and wildlife. If the issue of livestock is not resolved, the possibility of accepting WMA then becomes even more distant, given the penalties that one would incur in the event of contravening the regulations--something which communities are certain to do with respect to livestock grazing in the areas set for WMA.

### **Penalties for Infraction**

With livestock being prohibited from the WMA, almost every villager is likely to violate this prohibition, with the consequence of either getting a fine or jail term, or both. The jail terms are six months for the first offense, and one year for subsequent offenses (MNRT, 2002b sec. 71). At a time when the benefits are not clear, communities feel that the risk is not worth taking. With the issue of livestock and trespassing into game parks already being a source of tension between communities and the protected areas managers, communities are uncomfortable reproducing similar circumstances inside their villages. While wildlife strays out of the parks into village lands and damages property without compensation, communities are victimized and penalized whenever their cattle stray into the protected areas. This system of selective justice seemed to be finding its way into village land through WMA. In a workshop on WMA, villagers argued that “Blanket punishment should not be imposed on different offenders who break some of the dubious rules imposed on them” (WWG, 2003). The issue of penalties is thus frightening, and more so because of the wide ranging powers that the director of wildlife is perceived to enjoy in the proposed WMA dispensation.

## **Balance of Power Politics**

One of the overarching criticisms communities level against the WMA guidelines is the immense powers given to the director of wildlife. Almost every action requires deference to the director. We have already seen this with respect to investments. Even such things as engagement of experts “in any task” would require approval of the director “previously sought and obtained as and when required” (MNRT, 2002b sec. 22 (l)). There are clauses empowering the director to introduce new guidelines. The management of the WMA is also expected to comply with “any other tools that may be recommended by the director from time to time” (MNRT, 2002b, sec. 34 (c)). This requirement is repeated again elsewhere (MNRT, 2002b, sec. 78). The emphasis betrays an obsession with control that held the drafters of these regulations captive.<sup>21</sup>

Communities have taken note of this desire for control. In various fora, communities express concern about the way “the regulations give the director of wildlife and his cronies lots of power, and consequently there is decreased participation of the people in the whole process” (WWG, 2003; see also, Kallonga, Nelson, and Stolla, 2003). Communities fear that the powers of the director may end up emasculating village government authority and village land rights. The imbalance becomes more visible in light of the forest sector, where communities feel that they are the decision-makers, unlike in the wildlife sector, where all decisions come from the director (Kallonga, Nelson, and Stolla, 2003).

The powers enjoyed by the director, coupled with the other issues raised earlier, played out negatively in the villagers’ decision of whether to adopt WMA. Whether the other issues could have been taken equally seriously had the director not been perceived as being

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<sup>21</sup>Note that the clause on dispute settlement does not seem to conceptualize a situation where there is a dispute between the bureaucracy and communities. Is this possibly because the former is conceptualized as holding sway and hence has the final word (MNRT, 2002b, sec. 67-69)?

enormously powerful is a moot point. Nevertheless, these issues are the ones that embody the perceived powers of the director. Separating them adds no value to the question of how WMA could have otherwise been configured. The upshot has been a rejection, or lukewarm acceptance, of the WMA. Of interest are the seemingly benign attempts by the authorities to coerce recalcitrant villages into adopting WMA. One villager asked, “Can the Director of Wildlife force villages to start a WMA if they don’t want to do?” (Kallonga, Nelson and Stolla, 2003). Do such sentiments suggest that communities are feeling pressurized; and if so, why should the bureaucrats now want devolution imposed when they seemed to be against it?<sup>22</sup>

### **From Devolution to Imposition of Property Rights?**

The implementation of WMA, while it started as a program to liberalize governance of natural resources, seems to be replaying the experiences of “Ujamaa”(villagization), when rural communities were forced into living in communal villages (Scott 1998). Villagers have expressed sentiments that suggest that WMA are being forced onto them. When the government officer (referred to above) told villagers that they do not own land, this was perceived as a thinly veiled threat that they have no basis for rejecting a government project. Furthermore, as one village official told me, it came to their mind that what was confronting them was not WMA as they thought, but a second Serengeti.<sup>23</sup> Another village leader averred that they thought they were free to choose WMA, but after a series of meetings with

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<sup>22</sup>Even if it is assumed they were not against it, the imposition is still problematic. It would not generate the outcomes envisaged in the CBC model because the model presupposes an acceptance of devolution by communities.

<sup>23</sup>This was short-hand for saying that they are being forced to cede land for wildlife, just as they were forced out of Serengeti to pave way for the creation of a national park.



the government officials, they came to realize that implementing WMA was not a matter of choice; it was “rasima” (obligatory).

Perhaps the most glaring evidence that the wildlife authorities were planning to impose WMA is from a meeting between the wildlife authorities, villagers, and an investor in one village. This was one of the villages that had rejected the WMA, while the other villages in its cluster were showing readiness to accept the WMA project. The wildlife officer told the investor that he should know that his investment in that village was illegal. The assumption behind this warning was that this investor was the one inciting the village to reject the WMA. The villagers were assumed not to be interested in WMA because they were already earning good money from the private investor. For his part, the tour operator would not want the WMA because they would be formed by nine villages, and this would mean enlarging the range of actors he would be dealing with, including fellow business competitors.<sup>24</sup> Whatever the theory behind the village’s refusal to join the WMA, the episode discloses that the wildlife authorities were not prepared to respect the position of this village; they intended to coerce them into conceding.

The idea that the communities sensed pressure to adopt WMA also emerged in a villagers’ workshop when a Maasai traditional leader gave the closing remarks. He reviewed how villagers had so far been okay dealing with tour operators, since communities get some money whenever they lease their lands to tour operators. As for WMA, however, he observed that WMA have come like a stranger and this scares the villagers. He asked, “Why have WMAs been brought by the government as something to be pushed upon the

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<sup>24</sup>However, later it turned out that this investor was not the one behind the village’s recalcitrance, but rather, it was the hunting outfitter operating in that village. The theory now was that the outfitter did not want WMA because on their inception, hunting outfitters were supposed to enter into contracts with the management of the WMA and there was no guarantee, therefore, that he would secure this contract.

communities, instead of being chosen by the people themselves?” He said that community leaders prefer “...things that come in the open, not mysteriously, and we need education first before we are pushed into doing something” (Kallonga, Nelson, and Stolla, 2003). He then offered an analogy that suggested the agony communities had gotten into. He said that right now, they are like a pregnant woman, they can neither rise high nor bend low. The WMA was an idea they liked, but it had constraints they did not like.

Thus, the situation had by the end of 2003 become tense. This was even confirmed by consultants for the wildlife division who did a baseline study on WMA. In a number of villages, the consultants met with a lot of hostility. The popular response to the WMA had thus become hostile on both sides. The question then is whether a CBC instituted under such circumstances can engender a sense of ownership of natural resources--something the exponents of the CBC model, and private property rights in general, would expect. Can such a scenario lead to a CBC regime conscious of a long term future, or it would simply open avenues for resource predatorship? The hostility leading to this impasse in devolution is directly related to the implementation strategy that the wildlife bureaucrats designed for the WMA project. The strategy suggests that they were unwilling to cede power over resources to locals.

## **V Were WMA Designed to Fail?**

The turn of events, as we suggested earlier, could have been avoided. However, that approach to the issue presupposes that the failure was unintended. There is a growing body of opinion, both in the villages and among the conservation actors, that the WMA project

was conceived in such a way that it would fail.<sup>25</sup> A facilitator of a villagers' workshop on WMA observed with regard to the regulations that:

These subsidiary legislations are placed mainly to pose impediments to the implementation of WMAs that may in turn lead to cancellation of the same at the end of three-year trial run term (WWG, 2003).

I asked villagers why they should think this way, yet it was the government that decided to give the communities the opportunity and, hence, it does not make sense for the government to sabotage its initiative.

The two popular opinions were that, either the government did not want, but was under external pressure to start WMA, or that the government did want communities to benefit, but there is someone in the wildlife sector who has been benefiting and is now concerned that devolution would reduce the fortunes hitherto accruing from the sector.<sup>26</sup> If this proposition can be accepted as being consistent with the impression created by an examination of the limitations of the regulations, then the bureaucrats come out as the authors of the crisis besetting the WMA project. Also, as the foregoing review of the regulations showed, from the wildlife bureaucrats' point of view, the crisis can be said to have gone according to the script. This is especially so if one considers that the crisis over the implementation of WMA has been going on since 2003 and yet a resolution does not seem to be within reach. The

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<sup>25</sup>Of course, this raises the question of why the bureaucracy should then try to force people to adopt WMA. This is not, however, inconsistent with the conspiracy thesis because if people accepted WMA, albeit grudgingly, the entire project would mostly come to a halt and the wildlife division would step in allegedly to restore order. They could now arm themselves with empirical evidence that communities cannot be trusted with conservation. This outcome would even be better because it would remove the spotlight from them, unlike the current situation, whereby the WMA impasse is being attributed to the bureaucracy's intransigence.

<sup>26</sup>This is consistent with the experience in the privatization process in Africa. A Rwandan Minister has observed, "In the developing world, bureaucrats run a large share of the economy. As such, they are vastly influential and will frustrate moves to privatize the state firms that form the source of both economic and social power" (Nshuti, 2005).

pilot project was supposed to take three years, which have now elapsed before the WMA has taken off. Yet, even the fourth year is slotted for further discussion over the same issue. This possibility was disclosed during the Minister of Natural Resources and Tourism's budget speech in Parliament in which the minister, while addressing the question of community involvement in conservation, stated that "During the year 2005/2006, the ministry will continue to educate the public on wildlife conservation and to offer seminars on WMA regulations" (MNRT, 2005-translation mine). Given the analysis set out above regarding the contention over these regulations, the number of seminars required to resolve the implementation crisis is a moot point. The beneficiaries of the implementation logjam, however, are the wildlife bureaucrats. For them, the status quo continues. The question then is how to account for the bureaucrats' behavior and why they have been able to obstruct an apparently government sanctioned project.

#### **IV Bureaucracies and Transformation of Property Rights**

Models of bureaucratic behavior include bureaucrats as self-interested individuals and bureaucrats as agents of the public interest or as agents of politicians. The public interest model presents bureaucrats as acting in the best interests of the public. The state, in asserting its claim to the stewardship of natural resources, portrays itself as more competent in enforcing policies, unlike local communities who are prone to abuse of resources (Libecap, 1981; Ascher, 1999:239-241). One wildlife official in Tanzania, for example, told me that the devolution of property rights over wildlife to local communities cannot be executed in the manner that some NGOs charged with implementing WMA are doing. To this officer, the implementation should ensure that communities develop a sense of ownership in the project,

lest they abandon it later, perhaps selling it to speculators. To him, this would be dangerous because Tanzania may end up having its resources owned by foreigners. He buttressed his argument by making reference to the Maasai of Kenya who demarcated their land into individual plots before they knew, according to him, the implications of what they were doing. Some of the Maasai later sold it and are now landless. To this officer, the wildlife division is, therefore, over-seeing the interests of the public during the process of devolution of property rights to wildlife.<sup>27</sup>

I encountered a similar public interest logic in another wildlife officer. During a villagers' seminar on WMA, a wildlife division officer told me that the WMA project can be challenged in court as unconstitutional. This is because it privatizes property that belongs to all Tanzanians, and this is contrary to the Tanzanian Constitution--which stipulates that natural resources should be utilized for the benefit of all Tanzanians.<sup>28</sup> By extension, the officer was alluding to the judicial provision that holds that any legislation that is inconsistent with the constitution is null and void to the extent of that inconsistency. It is in this context that the WMA regulations would be invalidated.

Some bureaucrats even cast their role in the WMA in terms of safeguarding not just the wider public interests, but the interests of the WMA communities themselves. A senior wildlife officer argued that because communities are not yet developed financially, they may

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<sup>27</sup>I am not focusing here on the merits of his argument, but rather, the public interest claim that is being advanced. For an extension of his argument on the Maasai question, however, see Rutten (1992).

<sup>28</sup>Refer to article 9 (i) (c), (i); see also article 27 of the Constitution; I did not ask him where his argument leaves the mining ventures. Nevertheless, this idea that natural resources should be used for the benefit of all Tanzanians is also shared by President Mkapa (of course, he being the supposed defender of the constitution). Songorwa refers to Mkapa as having been quoted as saying that natural resources in the country do not belong to local communities, but are God-given gifts to the nation as a whole (Songorwa, 1999a: 145 quoting Majira July 10, 1997).

not be able to pay for the services of NGOs for technical expertise. On this basis, the officer contended that “wildlife authorities may be the only reliable and accessible source of service available to the local communities” (Zechariah and Kaihula, 2001:35). One can argue that this is a benign justification of the bureaucracy to retain a stranglehold in community affairs. The justification is, however, tenuous. Most of the NGOs that work with communities in natural resources management use donor-sourced funds for community mobilization or project investments. NGOs may be accused of using communities as a fundraising card for their own benefits, but they may not be accused of selling technical expertise to communities in natural resource management. This is a fact many observers of the African conservation scene can attest to. It is no wonder, that the wildlife officers referred to above, having come to the realization that there are many stakeholders who may be willing to assist communities, now seem to redefine the role of wildlife authorities. This role is now stated to be that of vetting those providers of service to communities that are able to “ensure quality delivery of services and compliance with the WPT (i.e. Wildlife Policy of Tanzania) and other national policies” (Zechariah and Kaihula, 2001:36). Certainly, nobody else has the mandate to discharge this responsibility other than the wildlife bureaucracy.

The role the bureaucracy is articulating for itself here is not something that they had just created with the designing of the WMA regulations in 2002. It is a theme that had dominated them for almost a decade. As far back as 1994, the director of wildlife, while conceding that communities would be given utilization rights in WMA, qualified this responsibility. He stated the following:

Within WMAs the villagers should be given the responsibility for deciding, *with appropriate professional advice*, upon the forms of wildlife utilization they wish to pursue and deriving benefits from such management. . . .

Elsewhere in the same presentation, he further observed, quoting an earlier workshop that:

Indeed, another recommendation of the Tourist Hunting Workshop was that local people should use their *unequaled knowledge to help set quotas, but they will need the help of professionals also* (W/D, 1994; emphasis mine).

Thus, safeguarding the interests of communities and the wider public is presented as the motive for this bureaucratic involvement in community matters (see also Songorwa, 1999a: 41, 45ff).

The public interest model is, however, difficult to sustain given the pattern of bureaucrats' failure as public agents. This failure even raises the question of whether they know what is in their best interests, let alone that of the public (see, for example, Olson, 2000).<sup>29</sup> In the wildlife sector, for example, the impoverishment that characterizes communities living with wildlife is largely attributable to policy failures on the part of the bureaucrats in charge of this sector. Moreover, the decline in wildlife numbers (section II above) suggests that the bureaucrats have failed in protecting this public asset. Part of this decline is attributable to the consumptive wildlife utilization enterprises run by the wildlife division; these enterprises operate under circumstances that are not always transparent and are considered unsustainable (see, for example, Majamba, 2001; Nshala, 1999; JET, n.d.). The public interest model is, therefore, a poor indicator of what propels such bureaucrats while in public service. The same can be said of the other model that portrays bureaucrats as helpless tools in the hands of politicians.

The relationship between bureaucrats and politicians has been viewed in terms of independence of bureaucrats from politicians on the one hand, and bureaucratic

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<sup>29</sup>This is so, given that an "irrational" response by these communities can easily result in mass decimation of wildlife overnight. In such an event, some echelons of the bureaucracy could be sacrificed by the political wing of government as it seeks to mollify community hostility.

subordination by politicians on the other (Weingast and Moran, 1983). In Africa, bureaucrat-politician relations need not be viewed in terms of either domination or subordination. African politics tend to be neo-patrimonial; hence, the bureaucrats and politicians are glued together in a patron-client relationship that is directed at serving their interests as wielders of power (see, for example, Kasfir, 1969). Consequently, the self-interest model is more promising in analyzing state-society interactions in Africa (Bayart, 1993; Crook, 1989).

In Africa, the opportunity for rent-seeking should be assigned prominence because it directly motivates the behavior of bureaucrats engaged in contracting for property rights.<sup>30</sup> This observation is consistent with the self-interest model's contention that bureaucrats seek to expand their administrative role, which in turn confers on them higher salaries, longer tenure, and greater opportunities for political patronage (Libecap, 1981: 153). Literature on determinants of devolution of property rights over natural resources show that the erosion of a natural resource triggers the need for devolution (see, for example, Libecap, 1989:66; Stephanie, 2001: 19-20; Hughes, 2001: 33.). Literature further suggests that property rights entrepreneurs, recognizing the need for a new property rights regime to deal with the new situation, initiate the production of these rights (Anderson and Hill, 2003: 122; Anderson and Hill, 2004: 18). With respect to natural resources, what generates the recognition of new property rights seems to be treated in the literature as a factor of bureaucratic benevolence (see, Stephanie, 2001: 19-20; Hughes, 2001: 33).<sup>31</sup> Commenting on the devolution of

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<sup>30</sup>See, for example, Nshuti, 2005.

<sup>31</sup>A Tanzanian national working as an environmental officer for a bilateral agency held the same view. His view was that, when he was in the forestry division in the ministry, the sector was seen as less progressive than the wildlife division, but when there was a change of top personnel, the forest department developed the modernizing spirit (defined in terms of devolution), such that it is now the reference point of what devolution means. He was, therefore, of the opinion that even in the wildlife sector, circumstances might change towards acceptable devolution as top personnel are replaced. (cf.



property rights to wildlife in South Africa by the Natal Parks Board, for instance, Hughes states:

In 1963, the board realizing that successful biodiversity conservation must involve private landowners, started the first Extension Service designed to encourage the proper management and care of wildlife on private land (Hughes, 2001: 33).

Thus, if bureaucrats do not recognize a need for transformation of property rights, we should expect them to be obstructive during the negotiations for devolution of property rights. In Tanzania, for example, wildlife authorities prefer to claim that the conservation management regime is under control (see, for example, the controversy over the Loliondo Game Controlled Area, in East African 1 and East African 2). Hence, their response to devolution borders on opposition.

Bureaucratic opposition to the re-definition of property rights can be due to the bureaucrats' anticipated share in the proposed dispensation. Thus, in the proposed WMA in Tanzania, one can predict that bureaucrats will be concerned with the benefits that would accrue to them for ceding property rights over wildlife to communities. The communities, for their part, would be concerned with the share-formula suggested by the regulations governing the WMA. For them to sign onto WMA, the formula should be such that communities would not be worse off than they were prior to their participation in WMA.

Distributional considerations are, however, more pronounced because the government is directly an interested party. At this point, it is necessary to dichotomize government, indeed the executive, into politico-executive and administrative/technocratic-executive. The former, epitomized by the cabinet, straddles both the executive and the legislature. It has, together

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case of Campfire, Child (n.d.). Similarly, a former Director of Botswana Wildlife Service told me that individuals matter in executing successful devolution projects.)

with the legislature, the final word over policy. As the political wing of the executive, officials in this branch of the government bear the cost of policy failure. The bureaucrats are the technocratic wing of the executive; they implement policy. It is in this sense that one can discuss bureaucracy as if it is apart from the government. The wildlife bureaucrats have not only private selfish interests in the wildlife sector, but also official interests that would not necessarily be fulfilled by a situation in which the central government is satisfied with the wildlife sector (see tables 1 and 2 below). The wildlife bureaucrats have their own departmental interests that they would wish to defend from the other departments of the government. If the wildlife division is to be conceptualized as an individual, it can be said that it perceives what it has as a private good, while what it shares with other government departments is a public good. Similarly, the central government can have selfish interests in one of its departments. In this case, it would pay special attention to it. This is the case between the political wing of government, and the wildlife department in particular.

Government presence in distributional issues of the wildlife sector can be expected to bolster wildlife bureaucrats in their intransigence because bureaucrats can always pose as guardians of governmental interests.<sup>32</sup> Both the wildlife bureaucracy and the government are thus likely to pose a contractual problem if they decide to pursue their interests single-mindedly.<sup>33</sup> When the government is a claimant, it can also be expected to behave in a self-interested way, for as McChesney posits:

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<sup>32</sup>The wildlife division is a critical revenue earner for the treasury. Thus, any diversion of this largesse to other sectors of society can easily pass as a dissipation of rent from the treasury's perspective, since the government may fear that what the treasury may get as tax from the new owners cannot be equated with what the government was getting as the sole entrepreneur of the hunting industry; see, however, USAID/TZ-W/D, 2001.

<sup>33</sup>This pursuit of selfish-interest by government officials is starkly exemplified in the case of the collapse of the Canadian cod fisheries. The department of fisheries vigorously opposed evidence

government will predictably refuse to privatize when the costs to the Privatizers--government officials--fall short of the benefits to them. Government cannot be expected to act principally in altruistic ways any more than the ordinary person is primarily motivated by the welfare of others rather than himself (McChesney, 2003: 246).

The challenge of devising a devolution strategy that embeds a compensation scheme for bureaucrats then becomes that of how to offer the bureaucrats a formula that does not distort their incentives (see, for example, Anderson and Fretwell, 2001: 154). The bureaucrats' interests are the private gains they derive from an economy dominated by rent-seeking. These private (actually secret) gains pose a different type of problem in designing a compensation scheme, unlike such problems as who is to pay or receive the side payments, the size of payments, and their form (Libecap, 1989: 6). In this case then, the role of politics in the transformation of property rights becomes a significant factor.

Politics drives the crafting of new property rights by way of negotiations/lobbying or war (Libecap, 1989: 4, 11; Anderson and Hill, 2004: 23). When politics is involved in bargaining for property rights, it can assume unbalanced proportions. In Tanzania, for example, the imbalance in political bargaining is reflected in the unequal weight brought to bear on the political landscape by the two frontline protagonists in the wildlife sector: communities and wildlife bureaucrats. Diverse structural limitations render communities more susceptible to collective action problems than bureaucrats. Bureaucrats operate in a hierarchical system where directives are easily implemented.<sup>34</sup> It is, therefore, relatively easy for them to execute

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showing the imminent collapse. Later on, politicians were to openly admit that they were caught up between scientific evidence and economic reality (the fishing communities who were voters, while the cod weren't) (Brubaker, 2000:193-4).

<sup>34</sup>This is what happened in the collapse of the Canadian cod fisheries; scientists in the department were warned that they may not criticize their employer in public. They were warned that such an act was equivalent to assault and fraud and was grounds for retribution (Brubaker, 2000: 187). The

a project to its conclusion, even in the context of scarce resources or divergent opinions among them. Moreover, bureaucrats are welded together, given that they are already benefiting from the property rights under threat. Thus, they have private incentives to protect the interests of the collective as they would protect individual interests.

Conversely, communities can be difficult to organize. They are dispersed, and their way of getting information, not only about each other but also about the wildlife bureaucrats, is inadequate. Then there are problems of resource availability. During a villagers' seminar, a participant captured the predicaments of the villagers thus:

There are now big conflicts over land, and rights to use land are being granted by the government without consulting the villages. What can we do- lawyers are too expensive as a source of help for communities? (Kallonga, et al, 2003).

In a further discussion that touched on the rights of citizens in the constitutions, another participant noted that

if we want to talk about the Constitution, we need to remember that many villagers have never even seen a copy of the Constitution and may not even know that it exists, let alone being familiar with the details of its contents. The result is that local people think that the law is their enemy (Kallonga, Nelson and Stolla, 2003).

It is thus evident that the predicaments besetting communities contrast sharply with the situation their competitors, the bureaucrats, operate in. In terms of resource endowments, communities are hamstrung, and this affects their participation in the political process. Even though communities may get around their structural problems,<sup>35</sup> this is mostly in an

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department also censured participation in professional meetings by members of its staff holding different views from those of the department as to why the cod was collapsing.

<sup>35</sup>Sometimes, through the help of conservation NGOs; Sand County Foundation (either on its own or in concert with others), for example, commits its efforts to sensitizing communities about the potential of the resources in their lands, and on the rights they have to utilize these resources. It does

ephemeral way. Hence, their articulation of grievances and formulation of tactics is not always effective.

The situation is further complicated by the fact that the state is also a direct, or even militant, claimant of the same property rights. This effectively denies the communities the benefits of Solomonic intervention in their struggle against wildlife bureaucrats. In cash starved economies, governments use rent from natural resources to finance other sectors (see, Ascher, 1999).<sup>36</sup> When the contributions of a given sector to the GDP are pronounced, governments can defer to the bureaucrats in that sector. The bureaucrats can then use powers of the state to do what industry seeks state power for: to block or slow the growth of new entrants (Stigler, 1971). Bureaucrats in Tanzania's wildlife division seem to fit this characterization. They are discouraging the active participation of local communities in the governance of the wildlife sector.

What then is the role of politicians in molding implementation of state wildlife policy that affects communities? Electoral considerations would lead us to expect that vote-maximizing politicians should be able to articulate the interests of their communities in both governmental (executive) and legislative circles. Literature suggests that politicians make a

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this by engaging natural resources lawyers to conduct seminars for villagers on these issues. Such seminars can either be for a single village, or could involve bringing participants from several villages together for a two to three day residential seminar (see, for example, SCF, 2002; Kallonga, Nelson, and Stolla, 2003).

<sup>36</sup>This line of reasoning was played out recently (2005) in Kenya by conservationists and other interested parties in opposing the transfer of Amboseli National Park from the state wildlife regulatory body (Kenya Wildlife Service, KWS) to the local communities in the region in which the park is located. While their opposition was inspired by the fact that the conservation lobbyists thought that the local peoples did not have the capacity to manage what they referred to as the fragile ecosystem of Amboseli National Park, they also cast their opposition in terms of the fact that Amboseli National Park is the lead revenue earner for KWS. Hence, if it is transferred to the local communities, with the consequence that KWS will no longer control the revenue from it, that will paralyze the operations of KWS in all other parks and reserves that are under KWS, but which do not generate any significant revenue to run their operations.

cost-benefit analysis to determine their support for each claimant in the production of property rights institutions (Libecap, 1989: 16-17, 21, 27; McChesney, 2003: 240). The expectation that politicians would support communities because of electoral considerations is based on the notion of a competitive democracy, which Tanzania is not.<sup>37</sup>

The salience of the vote in Tanzania is diluted by the fact that loyalty to the ruling party determines a candidate's sponsorship by the party to vie for political office.<sup>38</sup> In the 2005 political party nominations for Parliamentary elections, for example, the party's national executive council exercised its powers to ditch candidates who had won nominations during the party primaries at the grassroots. These candidates were replaced with their competitors who had either come second or third in the party primaries. Justifying this action, a party spokesperson argued that the national executive council "...had reached the decision after taking into consideration party interests" (Ippmedia 1, 2005). Because the ruling party has a stranglehold on the political landscape, politicians antagonizing the government (and by extension the ruling party) cannot bank on the possibilities of shifting alliances to another political party. Under the current multi-party politics, voters are displaying a tendency to see parties rather than individual candidates. Hence, some candidates who are otherwise regarded as frontrunners end up losing if they contest elections outside the sponsorship of the

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<sup>37</sup>Thus, unlike the case of the Canadian cod fisheries, where the politicians were prepared to ignore even scientific evidence because of the interests of the voters, in less competitive electoral systems, support for voters would have to account for whether such an action stirs resentment higher up the electoral chain.

<sup>38</sup>When I was doing fieldwork, I heard the claim that the President had warned ruling party politicians who were opposed to the liberalization of a bank that they should not forget that they will need the nomination of the party to contest parliamentary elections. This is a direct threat to politicians that they should not oppose government policies. It also underscores the confidence of the ruling party that more often than not, the candidates on its slate will sail through, at least in those regions where it is popular. The ruling party controls over 70 percent of elected seats in Parliament. Indeed, in both my research sites, I could not survey opinion across political party divisions because only the ruling party had a following there. Whenever I inquired about officials of other political parties, the popular response was a sigh of amusement--meaning the region is a ruling party zone.

dominant party of the region. Gibson (1999) demonstrates a similar situation for Zambia under the first multi-party republic. During this time, the ruling party was dominant and this affected the legislators' choice of legislative strategies. The current dominance of the ruling party in Tanzania was recently (2005) conceded by an opposition party politician who is making a third bid for the presidency. He observed that, "...The voting pattern in both 1995 and 2000 has shown that even if all the opposition parties were to come together, they would not succeed to topple over CCM," (Ippmedia 2, 2005). While there are exceptions in which the ruling party has succumbed to the opposition during parliamentary elections, on average politicians rejecting the ruling party for the opposition political parties risk ruining their political careers.<sup>39</sup>

Consequently, politicians in Tanzania have been slow in organizing their people against the wildlife sector in a way that could be interpreted as fermenting rural disquiet against the establishment. Politicians sympathetic to their peoples' plight because of wildlife menace seem to have contented themselves with attacking the record of the wildlife division from the floor of Parliament. In 1992, for example, Members of Parliament (MPs) temporarily blocked the passing of the budget vote of the Ministry of Natural Resources and Tourism. The minister was called to the floor about thirty times to respond to a barrage of criticisms

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<sup>39</sup>The recognition by the politicians of the dominance of the ruling party can be gleaned from what transpired in a meeting that was sponsored by conservation NGOs for Members of Parliament to sensitize them on the drawbacks of the proposed WMA project. The MPs admitted that there are issues that need to be addressed but, they argued, the seeking of such redress must be done through the ruling party. The party hegemony seems, however, to be under stress from the grassroots. Experience from the 2005 political party nominations for the parliamentary elections indicate that grassroots supporters of the ruling CCM are beginning to challenge the national executive council's tendency to override the wishes of the voters. In certain areas where the choice of the voters was over-ruled by the national executive council, the party's flag bearer for the Presidential vote was told openly by the voters while on the campaign trail that they will give him presidential votes. Nevertheless, they insisted that they would not vote for the party candidates for the parliamentary vote, since the candidate was not their choice (Nation, 1).

from the MPs against the performance of the wildlife officials. The press reported that Members of Parliament

raised a series of allegations against workers of the Wildlife Department, citing cases of cruelty, murder and rape. ... The MPs also complained that Wildlife Department officials in their respective areas were not cooperative. They ignored their advices and at times used abusive language against them. (Daily News 5/8/1992, in Songorwa, 1999a: 351, appendix 4, articles 1-2.)

Its clear from this session of Parliament that MPs are bitter about the wildlife sector, yet there is nothing much they have done. Although they temporarily withheld passing the ministry's vote, that was a one day victory; they passed the vote the following day after the government promised to take tough measures against the officials concerned.

A decade later, we find MPs admitting, as observed earlier, that the WMA regulations are faulty, but that a solution has to be sought through the party machinery. Their position can then be taken as evidence that the bureaucrats still wield more power than MPs, the latter's presentation to the government notwithstanding. As one of the MPs had observed in the parliamentary debate referred to above, "Despite frequent complaints to the Government on the conduct of the wardens...no serious action was taken" (Daily News 5/8/1992, in Songorwa, 1999a: 351, appendix 4, articles 1-2). This state of affairs could have impressed on MPs the belief that in a contest between them and the bureaucrats, the latter are likely to be the successful contenders, much to the detriment of the MPs.

In addition to political risks, politicians' commitment to (re)presenting community interests against those of the bureaucrats could also be affected if bureaucrats endeavor to



compromise the politicians.<sup>40</sup> Regarding this issue, one conservation NGO actor working in Northern Tanzania commented that this claim:

unfortunately continues to hold water--as recently exemplified by the case of the MP for...trying to sell the hunting rights of the ...rangelands to Arab hunting interests in collusion with the District Commissioner and District Game officer. (e-mail communication.)

Such bureaucratic overtures are tempting for politicians in a social setting characterized by rent-seeking, and who already entertain the idea that a fiery and structured defense of community interests is not a paying venture politically.

A politician in the Tanzanian context can thus be caught up between two claimants (bureaucrats and communities) who present unequal incentives for support. A politician's cost-benefit analysis of whom to support does not, therefore, easily lead to a conclusion that could hurt the bureaucracy. This means that the bureaucrats are saved from one potent danger that could stand in their way. In light of the self-interest model, certain characteristics of the Tanzanian wildlife bureaucracy that are relevant to the transformation of property rights can then be identified.

## **VII Character of Tanzania's Wildlife Bureaucracy**

The bureaucracy is both a lead claimant for property rights over wildlife and a regulator. As a lead claimant, it is satisfied with the status quo because it holds all the property rights to the resource, and it is, in its opinion, doing well. As a regulator, its fate, like that of most Tanzania bureaucrats, is not tied to job performance and, therefore, it has no incentive structure to make obligatory welfare maximizing decisions (see, e.g. Ascher, 1990: 11-12;

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<sup>40</sup>Some villagers actually shared this view. In one village, I read village documents in which the area Member of Parliament was accused of colluding with the district commissioner and wildlife division officers to give away village land to the wildlife division.

Leal and Fretwell, 2001: 48; McChesney, 2003:40; Nshala, n.d. a). Moreover, as a regulating agency, it is assured of political patronage given the centrality of the wildlife sector and the weakness of political actors that could voice community interests. Thus, in terms of factors influencing a bureaucrat's decision to defend the status quo, those in favor are strong, while those against are weak. As such, one can say that wildlife bureaucrats are blind to the short-term horizon of a publicly managed wildlife sector, and impervious to change because of several factors.

First, bureaucrats are apprehensive about a loss in revenue flow, both public (what goes to the Treasury) and private (rent-seeking) money, which they currently control. The wildlife division is in charge of all wildlife in Tanzania that is out of the national parks (and Ngorongoro Conservation Area). Wildlife is subject to both consumptive and non-consumptive utilization. The wildlife division controls directly the former, whose dominant mode of utilization is tourist sports-hunting. The current distribution of revenue from tourist hunting ventures in Tanzania is heavily tilted in favor of the wildlife division (see Table 1).

Table 1: Current revenue-sharing arrangement (from tourist hunting fees)

Beneficiary	% Distribution of fees from:			
	Trophy animal	Hunting block	Conservation	others
-Wildlife Division	25	0	0	0
-TWP Fund*	26	25	100	100
Treasury	49** (37)	75	0	0
Communities***	= (12)	0	0	0

\* (TWP) Tanzania Wildlife Protection Fund is under the wildlife division.

\*\* Treasury finally gets 37% because, of the 49% sent to the Treasury 25% is supposedly given to the communities.

\*\*\* Given to district councils; popular opinion is that it never reaches the target communities.

As Table 1 shows, most of the revenue from tourist sports-hunting, with the exception of the fees from hunting blocks, is retained by the wildlife division. Communities get only 12 %. Popular opinion, however, is that communities get 25 %. This is true as far as what the

treasury gives the communities is concerned, but the treasury gives 25% of what it receives after the wildlife division has taken its share --51% of total revenue. The wildlife division thus has at its disposal a large chunk from the state wildlife largesse that it can spend without having to apply for appropriations from the treasury. This is unlike the case with most other government departments that have to submit their appropriation estimates to the treasury in order to be allocated funds.

Yet, devolution of property rights over wildlife to locals through the WMA project implied shifting this revenue from the wildlife division to the local communities. A consultancy study on revenue-sharing in WMA that was commissioned by both the wildlife division and USAID came out with this recommendation (see Table 2).

Table 2: Distribution of wildlife revenue proposed by some experts (USAID/TZ-W/D: 2001). (The report also said that the distribution shown below received “strong support from stakeholders consulted”).

<b>Fees from:</b>	%Distribution of wildlife revenue to:		
	<b>community</b>	<b>District council</b>	<b>government</b>
Hunting block	100	0	0
Conservation	100	0	0
Tourist hunting Game	60	30	10
Resident hunter game	100	0	0
Tourism	70	20	10

The consultants’ recommendations reverse the distribution of revenue between the communities and the state from the way it is currently allocated (Table 1) and literally leaves the wildlife division empty-handed. Indeed, the report noted that its recommendations were an interim arrangement and that, “Ideally all monies should accrue to the...” communities in the long run. In the consultants’ scheme, the government would receive tax as they do from other businesses (USAID/TZ-W/D: 2001). It is important to note that in this distribution, the

wildlife division is not in the picture; it is conflated with the government.<sup>41</sup> What could be more alarming (from the point of view of the bureaucrats) about these recommendations is that they were not isolated cases from one consultant report. In this same report, the consultants footnoted their recommendations by saying that they received strong support from many of the stakeholders. Moreover, other prominent donor actors in wildlife conservation in Tanzania also held similar ideas that excluded communities sharing wildlife revenue with the state. One such authority holds the following view:

“Benefit sharing” is actually not a very appropriate term. The communities must be allowed to keep all the income and all the fees from photographic tourism and resident hunting on their land. Why should a farmer be allowed to keep all the cash from selling a cow, but if he sells a buffalo, for which he has been given user rights, he has to share the proceeds with the Government?” Instead of benefit sharing, the WMA should pay taxes so that the Government gets its appropriate share too (Baldus, et al 2001).<sup>42</sup>

These proposals suggest that wildlife bureaucrats were presented with conditions that led them to adopt a siege mentality with respect to the appropriation of state largesse hitherto under their singular control. While exponents of public finance would contend that the

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<sup>41</sup>One is tempted to suspect that the consultants who designed this scheme, in which they also reported that the scheme had received strong support from stakeholders, could have alarmed the bureaucrats—who then saw WMA as a real threat and hence chose the hard-line stance that they took (USAID/TZ-W/D, 2001). The bureaucrats had no reason to doubt this possibility of “dispossession”. They were certainly aware that there were other areas where devolution has meant some of the entire fees going to the communities. In southern Africa (Namibia, South Africa and Botswana), for example, communities keep the entire amount of trophy fees (USAID/TZ-W/D, 2001; Hughes, 2001; Traffic, 2000).

<sup>42</sup>Baldus has for a long time been associated with the German government development agency, GTZ, which initiated and runs the Selous Conservation Programme (SCP). SCP is based in Selous Game Reserve and tries to incorporate rural communities into wildlife conservation. It was SCP that arm-twisted the Tanzanian government into allowing it to retain some of the revenue generated from Selous Game Reserve. This was at a time when even the wildlife division was not retaining any money from the proceeds it collected. It was after SCP was allowed to retain some of the revenue that the wildlife division also managed to have the treasury allow it to retain some money as well (Songorwa, 1999a). Thus, the wildlife division has evidence that opinions coming from people like Baldus should not be taken lightly. They could easily be pushed through government corridors using the leverage of the donor support to other sectors of the economy.

government is ideally not losing anything, more so because it would benefit from an expanded tax base, government officials argued that the WMA project would imply loss of revenue for the government. An officer from the wildlife division stated:

reforms in revenue sharing need to be gradual so as to cushion the governmental loss of revenue, to give an opportunity to assess the progress of the designated WMAs and provide a window for revision of the regulations as deemed necessary (Zechariah and Kaihula, 2001: 36).

From previous pronouncements by wildlife officials, it can even be observed that the concern of the wildlife bureaucrats of loss of revenue was not so much regarding its impact to the national treasury, but rather, to the wildlife division itself. In 1994, for example, the director of wildlife, while addressing the question of issues to be considered in community conservation and wildlife benefits, posed the question thus:

Therefore the question is whether, in providing benefits to local people from wildlife, we should be aiming to take benefits from the earnings of the already overstretched, unsettled protected areas, as espoused in the policy of distributing a percentage of fees to districts (W/D, 1994).

There is then no doubt that the wildlife bureaucrats understand the financial dispossession inherent in implementing WMA. If the wildlife division was deprived of control over tourist hunting ventures, it would have to queue with other government departments in applying for appropriations from the treasury. This is a situation that a bureaucracy accustomed to affluence would not be enthusiastic about. It is thus evident from a comparison of the above tables why the wildlife bureaucrats should be alarmed and consequently set themselves the task of derailing the WMA project.

Second, a successful CBC initiative would render the bulk of services offered by the wildlife division redundant. A reduced demand for the services of the wildlife division would inform the need to shrink the wildlife bureaucracy. This is not something the

bureaucrats would look forward to because for them, the size of a bureaucracy matters. The size of the bureaucracy provides rationale for a big budget, and this big budget implies there are many avenues for expenditure, and hence opportunities for rent-seeking, and a patronage system.<sup>43</sup> If, however, communities are in charge of the wildlife in their regions, they would be responsible for general management of wildlife at the local level such that the role of the wildlife bureaucracy would be largely supervisory or advisory.

Elsewhere in Africa, where community-friendly devolution has been attempted, the model that was set up (before it was arrested by vested interests) pointed to the fact that under community control of wildlife, wildlife bureaucrats would have a minimal role. In Zimbabwe, for example, bureaucrats sponsoring the devolution of wildlife to local communities removed all monitoring or regulatory requirements that did not add value, such as government-approved quotas or permits. Communities were also legally empowered to control any abuse of wildlife by their individual members (Child, n.d.). An arrangement of this kind in the management of wildlife leaves very little demand for the services of the wildlife bureaucracy. Hence, its downsizing is easily justifiable, especially in an economy reeling under the weight of IMF structural adjustment programs. As far back as 1998, the Minister for Natural Resources and Tourism had referred to this downsizing of the sector thus:

Honourable speaker, the government retrenched civil servants to reduce its burden and to make sure that workers were paid according to their performance. This affected all sectors of government including game scouts of Kilwa (Daily Mail 30/7/1998 in Songorwa, 1999a: 347, appendix 1a).

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<sup>43</sup> The ways government bureaucrats use state agencies towards this end were recently (2005) exemplified in Kenya Wildlife Service, where recruitment for wildlife rangers for training overshot the cap by 100%. Investigations later revealed that the additional recruits were brought in by senior government officers and politicians who had been given letters of offer by KWS management to fill in recruits of their choice.

It can be expected that the message such observations send to wildlife bureaucrats is that if there are others who can do the job, and possibly do it even better, then further downsizing of the sector would be a foregone conclusion. That in itself is a disincentive for the bureaucrats to mid-wife devolution.

A third factor is that inclusion of other actors in the governance of the wildlife sector would necessitate managerial transparency, which is bad for both the rent-seeking and patronage benefits bureaucrats currently enjoy. In the way the wildlife division is currently structured, wildlife bureaucrats retain what Barzel (1997) refers to as both the legal and economic property rights, in this case, over wildlife.<sup>44</sup> In the event wildlife bureaucrats abuse this mandate, the people best placed to know and help to arrest the situation are those communities living with these resources. As of now, two scenarios exist. Some communities ignore such abuse, and if anything, they welcome it. This is because, given that they do not benefit from wildlife, but only incur damages from wildlife, any form of wildlife utilization that assists in the decimation of wildlife is to be appreciated, not apprehended, by communities. Thus, while communities have no incentives to repulse such abuse, they have every incentive to facilitate it.<sup>45</sup> On the other hand, a community may decide to check such abuse. In this case, its options are limited to reporting the abuse to the wildlife bureaucrats, yet these are the same people who are the culprits. So such an action adds no value to checking the abuse in the wildlife sector. In one of the villages I visited, certain documents

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<sup>44</sup>Barzel defines economic property right as the ability to enjoy a piece of property, while legal property right is what the state assigns a person (Barzel, 1997: 3, 90-91).

<sup>45</sup>See, for example, Guha, (1997:18), where in a village in India, a smuggler had eluded thousands of security personnel for a decade, but was aided by villagers disillusioned with conservationists and elephants that raided their crops. The smuggler was seen as a better alternative because he took care of their material needs.

showed that the villagers had written to the wildlife division calling for a moratorium on officially sanctioned wildlife hunting ventures. The villagers' argument was that the hunting ventures extant were not sustainable. When I asked the village executive officer whether there was any feedback from the wildlife division regarding the letter, he told me that they did not receive even an acknowledgement that the letter was received. In such a case then, communities find themselves in a precarious situation. Their options are limited.

While communities have the economic rights over wildlife (in the sense of Barzel, 1997),<sup>46</sup> they lack the legal rights over the same. Consequently, there is little they can do to right the situation if the wildlife bureaucrats are not supportive of their action. If the communities had legal rights over wildlife, however, they could act as co-proprietors of the wildlife sector together with the bureaucrats. This means that in the event of divergence of opinions between them and the wildlife bureaucrats over wildlife utilization, they would have a firmer legal basis in case they resolve to hold the wildlife bureaucrats accountable. The wildlife bureaucrats, once hemmed in by communities, would no longer be able to dispose of the wildlife largesse with abandon as they currently do--a fact that is already in the public domain.

The wildlife division was among the government departments singled out for censure by the Presidential Commission of Inquiry on Corruption (Warioba Commission, 1996). The Commission observed that discretionary powers have been used in ways that accommodate favoritism and discrimination, and consequently, corruption. This was particularly evident in the issuing of hunting licenses and in the allocation of hunting blocks (Warioba Commission, 1996). The legal inclusion of other actors such as local communities in the management of

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<sup>46</sup>This view is recognized even by the wildlife division. One director summed it up thus, "by law my department has control over the issuing of licences for all captures and killing of wildlife within GCAs, but in practice we have less control over what is actually killed or captured." (W/D, 1994).



wildlife would complicate the ways in which bureaucrats exercise their discretion. Communities' monitoring of wildlife utilization on the ground would give them access to information of all those utilizing wildlife in their regions. In this way it would be easy to disclose when wildlife bureaucrats exercise their discretionary powers as if the wildlife sector is their personal fiefdom. The inclusion of a multiplicity of actors with legal rights over wildlife is thus not favorable to a bureaucracy accustomed to rent-seeking and patronage. This unease can inform their disquiet with devolution.

Lastly, the mandate to run the wildlife sector, just as is the case with other sectors, is not backed by any performance contract and hence there are no occupational hazards for pursuing strategies with short-term horizons. I once had a short conversation during a seminar tea break with one bureaucrat who told me that in Tanzania, the wildlife division, unlike Kenya Wildlife Service, does not take orders from "these people" (referring to the foreign donors or experts). This is because the wildlife division does not have to rely on the foreign donors for subvention because the wildlife division generates its own revenue. Implied in this was a sense of evaluation that suggested that the bureaucrats feel they are self-paced while executing their responsibilities. Wildlife bureaucrats are, therefore, under no pressure to take up innovative ideas, even if they could thereafter re-align these ideas with their pursuit of selfish-interests.<sup>47</sup> Thus, it can be expected that if the bureaucrats are confronted with a proposal for devolution of property rights over wildlife based on a premise that defines the problem as technical or managerial, they can easily hold out. The proposal

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<sup>47</sup>A similar lack of pursuit for innovation is noted in officers running the Yellowstone National Park in the United States. Terry Anderson observes that landowners bordering the park have had problems with the bison that spread brucellosis to their domestic animals. The bureaucrats running Yellowstone are not liable for this damage and hence, they have no incentive to contract with other actors in search of a solution to this problem. Consequently, the question of how to deal with the problem is just "political football" (Anderson, 1998: 279).

would not be addressing their concerns (selfish interests). This is what happened in the case of Tanzania's experiment with devolution of property rights in wildlife. The bureaucrats thus moved to arrest their dispossession by crafting a devolution project unacceptable to the communities. In designing the WMA strategy, the dictates of self-preservation seem to have been uppermost in the bureaucrats' scheme of things. This, in the findings of this chapter, is why the policy proposal to devolve property rights over wildlife to local communities in Tanzania has stalled.

The question that emerges from the foregoing observation, however, is why the government should have bothered producing regulations that are unacceptable instead of rejecting the devolution project altogether. To understand this apparent contradiction or confusion, one needs to note that there are two processes occurring in the politics of devolution of property rights over wildlife to local communities. One is political, and the other is administrative/technocratic. The latter is squarely in the hands of the wildlife bureaucrats, the arm of the executive charged with implementing policy. The former is the arena of policy making, which combines both the executive (President and Minister) and the legislature, in which the President and Minister are also involved.

At the political level, the government is dealing with more than local communities. While the government may not be enthusiastic in surrendering its hitherto dominant hold on the wildlife sector to local communities, it is constrained in its options by the international circumstances within which it is operating. Within the wider political economy of the state, the government is dealing with donors who are interested in involving communities in conservation projects. This is the case even elsewhere in Africa. In Kenya, for example, the involvement of communities in wildlife conservation was imposed on the government by

donors like The World Bank, who, at the behest of conservationists, linked their funding of projects to community participation in wildlife management (Western, 1994, 1997). This approach has continued up to the present (see Chapter 4 in this study).

In Zambia, for example, foreign funding of conservation projects was central in the attempted incorporation of local communities in conservation programs. As Gibson has demonstrated, the government was made to give certain concessions in order to secure funding for conservation projects from western donors (Gibson, 1999; see also Suzuki, 2001, for Zimbabwe and Swatuk, 2005, for Botswana). Also, as noted in chapter one of this study, donor countries and agencies have now openly called for devolution of authority in environmental governance to local communities. This bias towards local communities, particularly in its wildlife conservation variance, reached its peak at the 2003 World Parks Congress, where the Protected Areas system was almost denounced in favor of community-centered conservation. In one recommendation, it was stated:

There is also a worldwide trend towards decentralizing authority and responsibility for the management of protected areas, including increasing efforts to develop partnerships among different sectors of society and to provide for greater engagement of civil society in decision making related to protected areas (WPC, 2003, rec. 5.17).

Thus there is a lot of pressure brought to bear on African governments with respect to the governance of natural resources. This has meant that at the policy level, the government is forced to speak the language of the donors, since they hold the purse strings. In Tanzania, the process began with Selous Conservation Programme (SCP) when the government appealed to the international community for help in combating wildlife poaching. The German government responded to this call, but linked its support to community participation in wildlife projects. The German government even went further to peg support for other

projects in non-wildlife areas to the Tanzanian government's response to the SCP. The popular opinion among wildlife bureaucrats was that community participation in wildlife was a donor affair, whereby local institutions were "only passengers, while the donors are doing the steering" (Songorwa, 1999a: 118, see also p. 316, 320). Perhaps it is because of such sentiments that there is a disconnect between policymakers' pronouncements and progress in implementation of the declaration of interest in involving local communities in wildlife conservation. The government has been professing community involvement in wildlife management since the late 1980s. The pronouncement gained tempo in the 1990s. In 1994, for example, the minister in charge of wildlife, while talking about projects related to community conservation, observed:

A common development among these projects will be to establish Wildlife Management Areas (WMAs) in line with proposals made in a draft national wildlife policy that still awaits implementation (MTNRE, 1994).

Yet, it was not until 2003 that the current stalled implementation programme was taken to the communities, following the release of the WMA regulations in 2002 (MNRT, 2002 b). The long interlude can be attributed to the fact that the government was chanting a chorus it did not believe in.

Thus, contrary to Songorwa's (1999a: 167) contention that the government is not willing to devolve authority over wildlife to communities "both at the policy...and the practical....level", we find that the government has at the policy level pronounced what would be expected from any zealot of CBC. It has committed itself to devolution. Songorwa's claim seems to be based on an earlier draft of the policy (see also reference to section 3.2.6 when sections in 3 end at 3.2.4). Songorwa quotes section 3.3.1 of the policy that calls for the need for government to coordinate conservation in and outside Protected

Areas so as to address national priorities and minimize abuses, as evidence that the government does not trust communities. However, this is not the case with respect to the Wildlife Policy of Tanzania (WPT). Section 3.3.1. of the policy is about strategies of achieving wildlife policy objectives. Among these strategies is “establishing a new category of protected area to be known as Wildlife Management Area for the purposes of effecting community based conservation” (MNRT, 1998b:11). Thus, the public transcript of the policy is very CBC- oriented. The problem is implementation.

Thus, while the government may not believe in the policy, it is nevertheless forced to have it for the purposes of its broader political economy project, which is heavily influenced by the donors. It is then left with the option of sabotaging the policy at the level of implementation in the style of “weapons of the weak” and “hidden transcripts” strategies (see, for example, Scott, 1985; 1990; see also Haugerud, 1995). Commenting on the possibility that this is what could have been happening, Songorwa avers:

Few people, if any, can willingly and knowingly put themselves into a hostile situation. Many of the wildlife managers may be against the approach although, for a variety of reasons, they do not want to express their opposition openly. No individual or organization would want to openly oppose the employer/funding agency on an issue/idea the employer/agency believes is correct (Songorwa, 1999a: 47).

Additionally, he observes the following with respect to the wildlife bureaucrats’ opposition to the CBC approach:

The Wildlife Department was opposing/reluctant to accept the approach, although the evidence presented below is circumstantial—its opposition could be implied mainly from its reluctance or sluggishness to clear the path for the approach (Songorwa, 1999a: 153).

Whether the bureaucrats have the blessing of the political wing of the executive branch of the government is difficult to tell. Nevertheless, some commentators believe that the top

decision makers in government are committed to the policy. The problem is that because the government is not monolithic:

There are officials at the middle level of the central government, who might fear to lose authority, influence and also income opportunities, if responsibilities are transferred to districts and communities (Siege, 2001: 22).

Of course this raises the question as to why the higher level officials have not, over time, reined in the middle level officials if the latter are not acting as per the official policy. Such questions lead one to sense that even though the bureaucrats may have vested interests in the status quo, at the same time, the top decision makers may not be exerting sufficient pressure on the bureaucrats to act as per policy. It is in this context that a policy that is community-friendly is produced, but fails to be implemented in a way consistent with what it promises.

## **VIII Conclusion**

In this chapter, the question of devolution of property rights over wildlife was discussed. Using Tanzania as a case study, the discussion reviewed the current impasse in the formation of WMAs. The discussion is significant in that actors in wildlife conservation are increasingly reaching the conclusion that the predicaments besetting the wildlife sector lie not in policy and law, but in implementation (see, for example, ACC et al, 2004). Taking account of this, I have examined the question of the wildlife bureaucracy in Tanzania as a stumbling block to devolution. While the behavior of the bureaucrats mirrors that of the counterparts in Zambia, as analysed by Gibson (1999), their targets are in the opposite direction. In Zambia, bureaucrats sought to insulate themselves from politicians, and in their schemes, they were eager to cultivate acceptance by communities by making communities benefit from wildlife largess. In Tanzania (and, as we see later, in Kenya as well), on the

other hand, bureaucrats sought to insulate themselves from communities, and had no fear of politicians' invasion of their turf. In the case of Zambia, bureaucrats relied on international donors to cushion themselves from politicians' interference, while in Tanzania, bureaucrats relied on their legislative and administrative mandate to cushion themselves against possible adverse impacts of community participation. In both cases, however, their strategy was geared towards securing their foothold in the wildlife sector. The analysis in this chapter shows that the bureaucrats have no incentive to mid-wife devolution of property rights to local communities.

The claim about disincentives is supported by several factors. Firstly, there is the subjective claim that the bureaucrats conceded to devolution against their will (Songorwa, 1999a). Secondly, and more importantly, when they moved to devolve property rights, they issued regulations that suggest two things: one, they devised a WMA regime that will be rejected by the communities and, therefore, the status quo will continue. Otherwise, two, the regulations will (if accepted) let the bureaucrats not only retain the same control that they had, but also make them better off than before because the regulations will expand wildlife habitat and their mandate into community land with the consent of the communities. Community consent would ease the tensions that characterize the bureaucrat-community relations, without the bureaucrats losing their clout in the sector, which is good for bureaucrats. Thus, the problem of the lack of incentives is one that is constraining the transformation of property rights over wildlife. Bureaucrats have no incentives to devolve property rights to communities, while communities have no incentives to take up WMA, given the way WMA are regulated.

In terms of our hypothesis, we would expect communities to refuse to sign up for WMA. Nevertheless, while some communities have acted consistently with our hypothesis, others have shown tendencies to concede to the WMA project as presented by the wildlife division. The question then is how to account for this move that would appear to be contrary to expectations of how actors in transformation of property rights behave. Moreover, would the resultant transformation of property rights in these WMAs deliver the outcomes envisioned by the exponents of the CBC model? The next chapter addresses these questions.



## **Chapter III**

### **Nothing Better: Acceptance and Rejection of WMA in West Kilimanjaro**

#### **I) Introduction**

This chapter accounts for the variance in responses to the WMA project. The preceding chapter led to the conclusion that communities would reject the WMA project. Community response, however, has been varied. This variance has occurred at both the national level, among different proposed WMA, and at the local level, within a single proposed WMA. Some communities rejected the WMA project. Thus, they acted consistently with the argument of the preceding chapter and with the expectations of property right theory in general. Other communities, however, consented to the WMA project. This chapter uses one of the proposed WMA projects to examine the simultaneous verification and refutation of the argument in the preceding chapter: that communities would reject the proposed WMA project. In this case, we examine this fractioning as it occurs within a single proposed WMA. This chapter further examines the question of why communities most likely to reject the WMA consented to a project that is seemingly a liability to them. The question of whether communities' interaction with natural resources under the circumstances would lead to a predatorial approach is also examined.

The preceding chapter suggested that communities stand to gain no explicit benefits from the transformation of property rights proposed in the WMA project. Both theoretical and empirical evidence (communities' pronouncements) pointed to this conclusion. If anything, it seemed, communities could lose. Some secondary literature also suggests that African

rural communities are not interested in wildlife conservation anyway. If communities are not interested, then the rejection of a problem-ridden WMA project should be a foregone conclusion. Yet, certain communities consented to the project, contrary to the foregoing expectation.

Accounts of why African rural communities may behave contrary to expectations suggest that this could be due to such factors as the desperate conditions these communities operate in, ignorance of the implications of their actions, or that communities do not consent, but are simply involved in theatrics with the (state) system. These accounts fail to unravel the puzzle of communities conceding to the WMA project when they should have rejected it, owing to it being a seeming liability to them. I posit that the communities analyzed here were predisposed to accept the WMA project because the conditions that existed on the eve of the introduction of WMA made the WMA project appear expedient to them. This predisposition materialized into consent for the WMA project because the region lacked a strong anti-WMA coalition that could have tilted the balance of decision-making against WMA.

The body of the chapter is organized into four sections. Section Two provides background information on the study area. Section Three deals with responses to the introduction of WMA in Enduimet Division. Section Four explains why communities in Enduimet Division accepted the WMA project. The conclusion then follows.

## **II) Background Information**

### **Location**

The Enduimet Wildlife Management Area (WMA) is located in the Enduimet division of Monduli District, Arusha Region. The area is on the western side of Mt. Kilimanjaro, along the Kenya-Tanzania border. It lies along the Amboseli ecosystem. The Enduimet division is divided into two wards, with nine villages. These wards are Tinga Tinga (with three villages: Sinya, Tinga Tinga and Ngereyani) and Ol Molog (with six villages: Elerai, Ol Molog, Lelangwa, Kitendeni, Irkaswa, and Kamwanga). Enduimet division together with Longdio division forms the Longido electoral area with one Member of Parliament.<sup>48</sup>

### **Demography**

The division has a population of about 17,000 people. The total number of households is 3,675 (Ol molog ward has 2,615 and Tinga Tinga ward has 1,060). The average household size is 4.7 for Ol molog and 4.5 for Tinga Tinga (URT, 2003). The dominant ethnic group is the Maasai, while other ethnicities include WaArusha, Chagga, Pare, and WaAmeru. There are a few other ethnic groups, including some from Kenya, but their numbers are minimal.

### **Socio-economic Characteristics**

The division has several primary schools; every village has a primary school. There is no secondary school, however, though there are plans to build one. Some villages have medical clinics that provide outpatient services. There is religious diversity, exemplified in the

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<sup>48</sup> Monduli district was sub-divided into Monduli and Longido districts in 2005. Enduimet division is now in Longido district.

presence of various Christian denominations, a few Muslims, and the predominance of a traditional belief system.

The predominant economic activity is livestock keeping, but some villages like those in Ol molog ward are involved in farming as well (see below). Each village has a shopping centre with traders' retail shops, restaurants, butchery and beer shops. The busy days are the market days that occur during different times of the week in different villages. During market days, itinerant traders bring wares from outside the division, especially from Sanya Juu, which is Enduimet's gateway to Arusha.

### **Major Land-uses**

Three major land-uses are discernible: wildlife, livestock, and agriculture. The intensity of agriculture and wildlife depends on the individual villages. Some villages are well endowed for cultivation, while others are not. Others offer a better attraction for wildlife, while some (at least one) have little room left for wildlife, except perhaps a few that may stray from the major wildlife habitat or migratory areas and enter the village.

### **Wildlife**

Enduimet Division has a lot of wildlife, and it functions as a corridor for wildlife migrating to and from three national parks: Amboseli, Arusha, and Kilimanjaro. Wildlife species include the following: gerenuk, lesser kudu, striped hyena, cheetah, zebra, wildebeest, elephants, buffaloes, elands, giraffe, vervet monkeys, baboon, Thomson's gazelle, Grant's gazelle, patas monkey, and beisa oryx. Due to the open range nature of this

region, wildlife roams freely in areas otherwise meant for residential and other domestic purposes.

### **Livestock**

Most of the villagers keep livestock that includes cows, goats, sheep, and donkeys. Livestock keeping is the predominant mode of economic activity in this area. It is not unusual to find villagers with hundreds of heads of cattle. The density of livestock ownership, however, keeps fluctuating because whenever a drought strikes, hundreds of livestock die. The livestock-keeping tradition is facing stiff challenge from decreasing pasturage that is emanating from an increase of crop cultivation in the area.

### **Agriculture**

Agriculture is a major activity, especially among itinerant cultivators who lease land from the local Maasai for cultivation. Middle class civil servants such as teachers working in the area also lease land for cultivation. These outsiders, more than the local Maasai, drive the cultivation industry. Cultivation is both hoe-based and mechanized. Mechanized cultivation involves ploughing several hectares of land for planting maize or wheat. Farmers harvest the wheat through mechanization. Other cultivated crops include beans and Irish potatoes. Village authorities enforce proper farming practices, with some villages such as Lelangwa having by-laws that penalize failure to follow proper farming practices. The by-law states: “a person who does not apply better farming practices commits a crime and is liable for a fine of sh. 50,000” (Lelangwa, n.d.: villabe by-laws, no. 18). The region is considered highly productive for agriculture, with farmers planting and harvesting twice a year. Farm produce

is sold to businessmen from Kenya and from neighboring urban areas such as Arusha, and these businessmen visit the region during harvesting period. *Given this scenario, wildlife ventures should have no fighting chance as a choice of land-use by villagers. Apparently, however, they have.* A study of community governance of village land-use shows a determined attempt to provide a space for wildlife when allocating land for various uses. Thus, in a sense, there was an attempt to operate a village WMA even before the wildlife division instituted the formal WMA.

### **III) Response to the Proposed WMA in Enduimet Division**

From the discussion in the preceding chapter, communities should be expected to reject the WMA project. The introduction of WMA, however, elicited various responses. This divergence was evident at both the national and local levels. At the national level, some communities that were supposed to implement the WMA project have rejected the proposed WMA. The proposed Loliondo WMA is one such example. On the other hand, some communities have accepted the proposed WMA. Nevertheless, this acceptance has not been universal among all the villages that were meant to form the particular WMA. While some villages accepted, other villages, or scions within a village, rejected the WMA project. The proposed Enduimet WMA falls in this cluster of divergent local responses.

The WMA project in West Kilimanjaro was instituted as part of the national WMA pilot project, in which sixteen pilot WMA were to be started among various communities in Tanzania. Various villages were grouped together to form a single WMA. Enduimet WMA in West Kilimanjaro was one of these pilot WMA. Implementation of the WMA in Enduimet Division began in 2003, subsequent to the wildlife division's release of the WMA

Regulations in December 2002. The wildlife division appointed The African Wildlife Foundation (AWF) to be the facilitating NGO during the establishment of the Enduimet WMA, while the District Game Officer (DGO) Monduli district was the implementing agency.

The initial response to the institution of the WMA was dramatic in two respects. While Enduimet division has nine villages, only eight had initially been selected for the pilot WMA. One village, Kamwanga, was excluded. This village, therefore, petitioned for inclusion, and the government accommodated them in the project. On the other hand, while five of the other villages welcomed the project from the beginning, three villages presented some difficulties. Two villages, Sinya and Ol Molog, initially rejected the project. Ol Molog later conceded, but Sinya has rejected the project to date. One other village, Irkaswa, is split into two camps. One group rejects the WMA project, while the other is for it. The latter group had the village council on its side, and so it signed up for WMA. The village is thus participating in the WMA implementation process without obstruction from the dissenting group.

In the following section, we discuss the case of Kamwanga as a unique one because Kamwanga is aspiring to join a project that seems problematic. We then review the case of villages that acted consistently with the expectations of the preceding chapter. We then explain how different villages' conceptualization of gains from contracting for property rights in the proposed WMA informed their behaviour.

### **Kamwanga Village Invades WMA**

When the division of wildlife initially constituted Enduimet WMA, it excluded the Kamwanga village. The wildlife division did this because the village had no land to contribute to the formation of the WMA. Most of the village land had been converted into agricultural use, leaving no significantly uncultivated land that could serve as wildlife habitat. Consequently, the village contested this exclusion by claiming that they have critical services to offer a wildlife conservation project. In a letter addressed to the Chair of the Board of WMA, Monduli district in November 25<sup>th</sup>, 2003, Kamwanga villagers outlined a series of grievances regarding their exclusion from the WMA project. The letter was essentially the minutes of a village meeting held to deliberate over their exclusion from the Division's WMA.<sup>49</sup> The grievances were couched in the language of property rights, choices, and cooperation. The first speaker complained that it was wrong for them to be excluded, since, for many years, wildlife has wreaked havoc on their farms and property, but the villagers have not been retaliating. Another speaker complained that elephants repeatedly destroy water pipes, causing water shortages in the village. A third speaker "complained bitterly" of how elephants that year had destroyed about thirty-two acres of maize and beans, and when villagers relayed the information to the district, they received no response. Moreover, baboons eat crops, and villagers lose livestock, chicken, goats, and sheep to predators. I later learnt that the background to this complaint is that the village used to be a wildlife corridor linking Amboseli and Kilimanjaro National Parks. This corridor has since been converted into farms, but animals continue passing through the village, thereby damaging crops and property. Thus, the villagers were arguing that, in the event that they are

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<sup>49</sup>Notes are taken from the village file on that meeting held in November, 25<sup>th</sup>, 2003.



excluded, and since the villages running WMA will not be able to prevent animals from straying to Kamwanga village, Kamwanga villagers will resort to killing animals that damage crops. In the event that they are included in WMA, however, they will tolerate the wildlife menace since there is anticipation of benefiting from wildlife. Thus, we have a property right argument advanced by the villagers linking their choice of strategies in responding to wildlife to the benefits they would potentially derive from wildlife.

Villagers also averred that the government should not discriminate against them because their village used to be the market for poached meat from neighbouring villages. However, since they attended a seminar on the value of wildlife, villagers have been trying to fight the sale of game meat in the village. However, if they are excluded from the WMA, they will continue allowing the trade of wildlife meat that is procured through poaching. Again here, the villagers were linking their cooperation with wildlife protection to the pay-offs for reporting poachers. The villagers also claimed that their village is surrounded by the conservation areas of Amboseli and Kilimanjaro National Parks, and because of this, tourists go to the village particularly to see Mount Kilimanjaro. Tourists go to view Mount Kilimanjaro from Kamwanga because the village provides a better strategic position to view the mountain than other villages in the Enduimet WMA cluster. This scenic view, they argued, makes their village ideal for eco-tourism. Thus in this claim, they were making a case to mitigate the argument that they have nothing to contribute to the formation of a WMA that could be used as a product to market the area for tourism.

The DGO and AWF held a meeting in the village on March 2004, following the village meeting and the village petition for inclusion into the WMA.<sup>50</sup> The second agenda for this meeting was the Community-Based Organization (CBO). The formation of a CBO is the first stage in the establishment of a WMA. The villagers were presented with the WMA constitution that had already been prepared by the eight villages, excluding Kamwanga village. Thus, the wildlife division had already accepted their petition, and was incorporating them into the WMA system, such that by March 2004, Kamwanga was effectively a member of Enduimet WMA. What was the view of other villagers regarding the inclusion of Kamwanga into the Enduimet WMA when it had no land to contribute to the formation of WMA?

Apart from Sinya, some elements in Irkaswa, and to some extent Ol Molog, other villages seem to have been accommodative of Kamwanga's inclusion in the WMA project.<sup>51</sup> Members of Kitendeni's village environmental committee and Kitendeni's village representatives to WMA argued that it was fine for Kamwanga to be included. This concession was in part because the village is in the same administrative division as the rest of the villages forming WMA. Moreover, such inclusion, they argued, is in the spirit of their communalism (this is again another echo of Scott's moral economy of the peasant thesis (Scott, 1976)). The villagers were appealing to a sense of community to rationalize why they

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<sup>50</sup>Notes were taken from copies of minutes of the village meeting in the village executive officer's file.

<sup>51</sup>Perhaps their view towards Kamwanga was influenced by the reaction of Sinya towards the WMA project. They may not have wanted to be seen as if they were acting like Sinya. It was the view of other villagers that Sinya was refusing to join the WMA because, in terms of wildlife resources, it was better endowed than the other villages and, therefore, it felt as if it could be disadvantaged if it participated with others not equally endowed. So if these other villages had opposed the inclusion of Kamwanga, that would have been a tacit approval of the position of Sinya against them.

should accommodate Kamwanga village, so that it is not the only one singled out among the nine villages in Enduimet administrative division for adverse differential treatment. They also argued that, because Kamwanga village borders conservation areas such as Amboseli and Kilimanjaro national parks, wildlife imposes damages to its inhabitants. Hence, if their village is excluded from WMA, the villagers will be the greatest enemies of WMA. Members of the other villages echoed the foregoing sentiments of Kitendeni village. Thus, Kamwanga's inclusion into the WMA project was without incident. Nevertheless, as discussed below, there were discordant voices from villages such as Sinya and the renegades in Irkaswa. These villages invoked the irregularity of inclusion of Kamwanga in order to justify, in part, their rejection of the WMA project. The dissenting voices, however, show that contracting for property rights involves not just a contest among the villages and the state, but also a contest among villages and, as it shall emerge later, a contest among villagers within one village.

The case of Kamwanga's struggle to join a system that others are rejecting would tend to suggest that the expectations of the property right theory as outlined in the previous chapter are erroneous. Nevertheless, this view is premature. Kamwanga is not a good test case of the theory's major premise regarding the trade-offs that a party contracting for property rights confronts when making choices about the gainful strategy to adopt. Kamwanga's case should be considered unique because the village had nothing to lose in joining WMA. The village was not making any sacrifices as far as land and land-related issues are concerned. Yet, as shown in the previous chapter, these issues constituted the cause of disagreement. Thus, Kamwanga could only benefit, not lose, from the new regime of property rights in wildlife that was being promulgated. This situation is unlike what occurred in the other

villages such as Sinya, Irkaswa, and Ol Molog. The following discussion addresses these other villages.

### **Ol Molog's Initial Hold-out**

Property right theory contends that actors contracting for property rights will hold out if the expected gains from contracting are not attractive (Libecap, 1989). This is exemplified in the response to the WMA project by the villages that held out. The two villages that expressed reservation in joining the WMA project were Ol Molog and Sinya. The former held out briefly, but later conceded, while the latter has held out to date (2006). The analysis of the latter shall be undertaken below in some detail. Ol Molog, like Sinya, had some eco-tourism investments that gave it some income that was relatively higher than that other villages, save Sinya, were generating. The eco-tourism investment involves leasing village land to a safari operator who pays the village an annual fee for the land lease and a fee for each tourist the operator hosts in the village. There is an additional fee for each tourist who spends a night in the village.<sup>52</sup> Villages with these tourist investments are perceived as better off than the rest. Therefore, as will be shown below with respect to Sinya, the village leadership are thought to have felt that if they joined the WMA project, they would be losing out to the other villages that do not have similar investment arrangements.

In justifying their reservations about WMA, the Ol Molog leadership argued that some of the villages such as Kamwanga had no land to contribute towards the WMA's formation. Specifically, they were speaking to the fact that Kamwanga had no uncultivated land left that

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<sup>52</sup>Hoopoe Safaris, an eco-tourism award winning tour company, is the one that does business with Ol Molog village. It helps in rehabilitating village infrastructure such as roads. This is outside the contractual obligation, but is a way of strengthening the bond with the village, while serving the company's business interests because the company requires good roads for its eco-tourism activities.

could be set aside as a wildlife habitat. Secondly, they further argued, other villages such as Tinga Tinga and Ngereyani had ruined their habitat through practices like charcoal production. The contention here is that these villages cannot claim to be offering land that could serve any significant purpose as a wildlife habitat worth establishing as WMA. Consequently, they had no tourist product to offer. This means that these other villages, just like Kamwanga village, would be benefiting from the other villages' assets. Thus, Ol Molog leadership was raising issues of equity and the fact that some villages would be contracting for property rights over a commodity they are not producing. Ol Molog village, therefore, wanted to form its own WMA together with Sinya.

The objections by Ol Molog, WMA facilitators claimed, were only arising during meetings with the village council, not during general meetings between the facilitators and the entire village assembly. The facilitators held that the reason for this failure of the issues to crop up during general village meetings was that the objection to WMA was a village elite problem. The facilitators mostly dealt with the village council. The latter was then supposed to liaise with the village members. This, however, was not happening; consequently, some villagers were rarely informed and did not know what was going on. This agent problem, facilitators contend, is part of the problem they have been experiencing in the implementation of WMA. Implementing WMA entailed dealing with the general village membership and their leaders. WMA regulations require that for a WMA to be initiated, a village assembly has to accept it (MNRT, 2002b). WMA facilitators, however, had no formal access to the general membership except through the village council. The process of implementation thus suffered from something akin to "elite capture".

The AWF facilitators aver that they suspected the opposition to WMA was confined to relatively few people, namely those benefiting from eco-tourism enterprises already in the village. Consequently, they alerted the DGO that the non-consumptive investments are actually the ones motivating the village council's objection to WMA. The objection was because the village leadership thought that if they joined WMA, they would lose the local advantage they command as village political elites. WMA would bring in many actors, and, therefore, it would not be easy to secure private advantage similar to what they have when the village council is the sole proprietor of village activities. The AWF facilitators thus impressed on the DGO to act in his capacity as the regulator of wildlife enterprises in the district. The game plan was a carrot and stick strategy: the Ol Molog village authorities would be made to understand that their eco-tourism investment is illegal and that the government can evict the investor at any time. Nevertheless, WMA authorities would counsel the village authorities that it was possible for the village to have their investor and WMA project at the same time, thereby reaping benefits from both sides.<sup>53</sup> In this case, there would be no need to hold out. It was against the background of this apparent threat that the village council allegedly caved in and accepted the WMA project. Henceforth, Ol Molog joined the other villages in implementing the WMA.

Although WMA facilitators would later present a similar threat to Sinya, the village failed to give in so easily. The reasons why Ol Molog was not able to hold out for a long time like Sinya are varied. One reason is that their income from tourism investments was not

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<sup>53</sup> This was either a ruse, or the facilitators and the DGO had not grasped the letter of the WMA regulations. As was shown in the previous chapter, the question of investment in the WMA was not as liberal as the facilitators are hypothesizing here. For the investment in Ol Molog to continue after the establishment of the WMA, the investor would have to be the same one running the tourist hunting ventures in the WMA. Moreover, the investor would have to contract with the entire WMA, not just one village. Different investors could vie for the lease and seek patronage from different villages. There was no guarantee at this time as to who the investor would be.

as big as that of Sinya. The income was not, therefore, a strong incentive for the village leaders to present a spirited antagonism to the powers that be. Moreover, the absence of high-stakes tourism investments meant that there were no vested interests in Ol Molog to derail negotiations. This situation was unlike the case in Sinya, where the huge investments involved in eco-tourism led to the rise of various interest groups. Each of these groups was prepared to stake its claim at whatever costs. Another reason was that Ol Molog has a smaller area viable for wildlife habitat because the rest of the land is under cultivation. Therefore, the village cannot rely on eco-tourism as a major investment that would make it justify a claim to a WMA of its own. This is unlike Sinya, where there is absolutely no cultivation and the entire land is, therefore, available for wildlife and livestock ventures, such that Sinya has a basis for laying a claim to a WMA of its own.

### **Irkaswa's Corridor Crisis**

The villages of Irkaswa and Kitendeni both share a wildlife corridor, commonly known as The Kitendeni Wildlife Corridor.<sup>54</sup> Wildlife use this seven kilometer-wide area for grazing, dispersal, and migration between Mount Kilimanjaro National Park and Amboseli National Park. Wildlife authorities in Tanzania claim that during the rainy season, safari ants invade Kilimanjaro National Park, thereby necessitating the migration of elephants and other animals from the park to Amboseli. This corridor is the only remaining one to link Mount Kilimanjaro National Park with the outside ecosystem. If human settlements cause it to

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<sup>54</sup>Pro-corridor advocates in the village of Irkaswa call it Okunonoi, but those against it prefer to call it Kitendeni because this gives credence to their argument that their village has nothing to do with a wildlife corridor; rather, that the corridor is on the side of Kitendeni village and that is why the corridor is called Kitendeni corridor. This was spin because the village is the one that took its name from the corridor. The village is the newest village to be established in this region. The anti-corridor protagonists were using place names to disclaim responsibility and assert property rights to the corridor.

close, then the future of both Amboseli and Kilimanjaro National Parks is in jeopardy. Ecologists working in this area share similar views (Grimshaw, 1996). These ecologists, including student/researchers, conservation organizations, and wildlife authorities, have been at the forefront of efforts to get the state to accord the corridor some protected area status. Because of these efforts, the government of Tanzania, through Monduli district council, designated this area a wildlife corridor. This meant excluding the area from demarcation into small plots for the villagers. The designation of a corridor, however, was largely informal. The government did not erect beacons to mark the boundaries until sometime after 2000, when human settlement of the corridor appeared imminent. Because of these impending settlements, conservation NGOs such as AWF impressed upon the authorities the need to erect beacons to mark the corridor boundaries. This action precipitated the desire of some villagers of Irkaswa to invade the corridor and demarcate plots for themselves. The invaders uprooted the beacons and demarcated plots, sidetracking even the village authorities. The central government responded by intervening through the Monduli district administration. This intervention led to the arrest and arraignment before a law court of those suspected of masterminding the invasion and uprooting the beacons. By early 2005, the case was still pending in court.

The crisis provoked by this corridor produced two camps in Irkaswa village. There are those for and those against the retention of a formal wildlife corridor. Those against retention of a corridor prefer the subdivision of the area into plots to be given to villagers who are landless. However, this camp is again subdivided into two groups. There are those who would want the corridor allocated to people for cultivation, but prefer this process handled officially. The other camp want the allocation done at whatever cost, even if it



means ignoring the village government which is responsible for allocating village land.<sup>55</sup> Observers feel that interests of the itinerant cultivators drive the pro-cultivation group. These cultivators operate from the background because they have no legal claims in land matters in the village. It is alleged by the anti-cultivators group that the itinerant cultivators hope that, if the corridor is opened for cultivation, they would buy out the locals and farm in the corridor themselves. Critics of the anti-corridor group and other observers from neighbouring villages claim that this is what the itinerant cultivators have already done in Irkaswa village, which is comprised mostly of pastoralists.<sup>56</sup> They have either bought or leased land from some villagers, leading to land hunger that has generated the clamour for the demarcation of the corridor.

Those against cultivation in the corridor contend that, if the corridor is cultivated, they will not have a place to graze cattle during dry periods because almost every other place is being cultivated. From Table 3, it is easy to discern their concerns. For people who are predominantly pastoralists, one would expect them to set most of the land aside for pasturing. However, as Table 1 shows, this is not the case. The land available for cattle, wildlife, and forest is below 50%. Thus, diminishing pastoral opportunities represent a legitimate cause for their opposition to demarcation of the corridor. Moreover, they argue, the corridor has

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<sup>55</sup>Before this group invaded the corridor in 2003, they had unsuccessfully tried to convince the village council to allocate them land in the corridor. They then decided to demobilize the village council prior to invading the corridor. They invaded the village office, seized the keys of the village council's office and the village council rubber stamps. They then closed the office before proceeding to the corridor to demarcate for themselves plots of land. In closing the village council's office, they argued that because the council had failed to give them land, then it is of no value and has no business being in office.

<sup>56</sup>The pastoralists do not practice cultivation extensively; rather, they lease their lands to cultivators. These itinerant cultivators are mostly from the Wa Arusha and Chagga ethnic groups; some people from across the border in Kenya are also said to be involved in cultivation in this area.

been a place of livestock refuge during dry spells since the days of their ancestors, and it has never been open for human activity. Moreover, they further claim that if the corridor is cultivated, wildlife will have no place of abode and, therefore, will increasingly stray into areas already settled by people, thereby exacerbating human-wildlife conflict. Thus, to the pro-corridor group, the corridor should be left intact in order to minimize the stress that wildlife imposes on areas already settled by people.

The anti-corridor group, however, contends that this argument is illegitimate because it seeks to set aside land for wildlife when the government has set no land aside for people. Their argument is that, in areas already settled by humans, wildlife still moves around human residential areas, yet these areas are not wildlife corridors. Thus, they question whether wildlife will be instructed to avoid the areas inhabited by people after a corridor is set aside for them. They are, therefore, making the claim that different spaces should not be set aside for wildlife if wildlife will continue moving into or through the non-wildlife areas. This claim is significant in negotiating for implementation of WMA because WMA Regulations require that land be set aside for wildlife, and unauthorized human activity in those areas not only be excluded, but also be punishable. While the judiciary will certainly settle the fate of the corridor, at the level of village politics two contending opinions will, nevertheless, continue to color conservation decision-making. So far, the anti-corridor camp prefers to depict the conservation ideology as a phenomenon opposed to the interests of the people.

The government implemented the WMA project against this background. Consequently, the anti-corridor group now denies that the government ever told them anything about the WMA project. They even deny that any meeting occurred in the village to discuss, let alone elect, officials to represent the village in the WMA project. The secretary of the village

environmental committee, for example, told me that he is hearing for the first time about WMA from me. This hard-line position is understandable. This group can be expected to oppose WMA because, if they buy into the idea of WMA, they would be endorsing, inadvertently, the idea of a wildlife corridor. This is because the corridor will certainly be plotted to be part of the WMA land. Members of the anti-corridor group, therefore, represent the voices in Irkaswa village that are anti-WMA. However, they are counterbalanced by those who are pro-corridor; and as a result, Irkaswa village is represented alongside other villages in the WMA project. For the pro-corridor group, the WMA presents a good opportunity to collaborate with the state in their domestic war with the anti-corridor group.<sup>57</sup> Thus, the only village that is completely out of the WMA for now is Sinya.

### **Sinya's Struggle Against WMA**

Sinya village lies along the Tanzania—Kenya border, neighbouring Amboseli and Kilimanjaro National Parks. Its entire land is semi-arid, with virtually no space for agriculture. This is in contrast to the other villages in the Enduiment WMA cluster. Livestock is the predominant economic activity. The village also hosts abundant wildlife. Some wildlife conservation actors claim that half of the wildlife in West Kilimanjaro region is found in Sinya. The major attraction for wildlife is a salt-licking venue that is popular especially with elephants.

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<sup>57</sup>Most of the people favoring the corridor were positive that they would be witnesses of the state in the case before the court. They would testify that the corridor has been reserved for wildlife and dry-spell grazing for as long as the time of their forefathers.

Because of the abundance of game, the village has attracted the interests of many tour operators desirous of pitching tent in the village to exploit its eco-tourism potential.<sup>58</sup> The village also falls within an area designated as a hunting block by the wildlife division. These two wildlife ventures inform the tensions in Sinya that consequently complicate the implementation of WMA there. The major tourism venture that dominates discussion of Sinya is the eco-tourism investment. The village has leased three acres of land to a tour company for a campsite, at a cost of \$30,000 per annum. Because of this investment, plus whatever else the village may be getting from the hunting outfitter,<sup>59</sup> Sinya has become one of the most affluent of the nine villages in the Enduimet WMA cluster, and even among other pastoral villages in the district and in the Arusha Region.<sup>60</sup> The village has used money from wildlife investments to provide social services such as primary school education, a health clinic, village office block, water, etc. The village, for example, has one of the most modernized primary schools that I saw in Maasailand. It is against this background of successful eco-tourism wildlife utilization that the government was introducing the WMA project in Sinya. Given the problematic nature of WMA as reviewed in the previous chapter, Sinya's dogged opposition to WMA was a foregone conclusion.

The government introduced the WMA project as a program that would enable communities to benefit from wildlife living on village lands. This is evidently appealing to

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<sup>58</sup> Kibo Safaris, however, is the dominant eco-tourism investor in Sinya.

<sup>59</sup> As observed earlier, Hunting outfitters are expected to contribute to community developments in the villages that fall within the company's hunting blocks. This understanding that outfitters have with the wildlife division does not bind them to specific contractual obligation with the villages concerned.

<sup>60</sup> Ololosokwan village in Loliondo division, Ngorongoro district, is another village that enjoys similar status with Sinya. Ololosokwan is even more affluent because it is well watered and has better scenery, unlike Sinya, which is basically a semi-arid land. It has attracted more photo-tourism investors than Sinya.

villagers who, hitherto, were not benefiting from wildlife. Nevertheless, when applied to villages like Sinya that were already enjoying wildlife benefits, albeit against official regulations, the objective of the WMA did not show much promise. Even a casual glance at the WMA project does not reveal how the community will benefit; it merely gives the generic idea that an investment will yield dividends. To communities with other possible ventures to accomplish, the promise of what they would perceive as imaginary benefits is not a good selling point. Matters are bound to be worse if the impending WMA project embodies certain undesirable characteristics that suggest villagers could lose rather than gain from the project (—See Chapter Two). The WMA project seemed to fit this scenario. Consequently, given Sinya's current investment situation as outlined above, the village decided to reject the WMA project. Unlike other villages, Sinya has been protracted in its hold out.

Different people have expressed divergent opinions to explain the causes of Sinya's hold out. The range of hypotheses advanced includes: Sinya is jealous of sharing its wildlife investment with other villages, there are powerful forces (read government functionaries and politicians) behind the eco-tourism fortunes in Sinya, and village leadership is captive to the wildlife investors there (both eco-tourism and hunting outfitters). The hunting outfitter does not want to lose the hunting block, while the eco-tourism investor does not want competition from other tour companies and is averse to the transaction costs implied by having to negotiate with many villages. Another hypothesis, attributed to Sinya's village leadership, is that villagers are still not clear as to what WMA is all about; some WMA commentators say this is feigning ignorance.<sup>61</sup> The divergence of hypotheses notwithstanding, there seems to

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<sup>61</sup> While to a certain extent, Sinya's claim that they do not understand what WMA is about could be as the facilitators averred, it is not, at the same time, a claim that can be dismissed off-hand. Among the other villages in Enduimet, very few villagers could articulate what WMA is about coherently. The

be a convergence of opinion on the claim that Sinya feels it would be a loser in a joint WMA arrangement that treats all of its shareholders similarly.

### **Sinya's Grievances**

One of Sinya's grievances is that the WMA groups together villages, including those without any land to contribute, for the setting up of a WMA, such as in the case of Kamwanga village. The question, then, was what kind of investment the WMA is if the contribution of the shareholders is skewed against some villages. In addition to this skewedness in the contribution of land as the major resource for forming WMA, Sinya also had grievances related to the villages' unequal endowments. Sinya argued that, while other villages possess agricultural potential, Sinya does not. Sinya's comparative advantage is in the wildlife resource that was going to be the prime commodity on sale in the WMA. The question then is whether the other villages would bring their farm produce to the WMA table for sharing if Sinya gave out its land that is an asset in wildlife ventures. Sinya contends that it makes its living from wildlife and if it is going to share that with others, then WMA should clarify whether that will be the norm across all the other villages that have other land-use practices.

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most informed were those elected to the leadership of the Community-Based Organization (CBO) that will be running the WMA. This is in contradistinction to other areas like Loliondo, where I encountered a more widespread understanding of WMA among the villagers. Studies on Selous Conservation Program could also support the claim that Sinya's contention may not be just a ploy to keep WMA at bay. Research by Songorwa (1999a) that was done several years after the program had been instituted found that there was minimal understanding by the villagers about what the program was about. There was a difference of opinion regarding program goals between villagers and the program staff and wildlife officers. A similar instance of communities not understanding what the wildlife project is about has been reported from CAMPFIRE. While villagers thought they had been given control over wildlife to do as they deemed fit, they found it strange that when they wanted to kill problem animals, they were denied permission on the basis that the quota does not allow the killing (Bonger, 1999). Similarly, in Zambia, Gibson (1999: 136-7) found that a conservation program (LIRD) spent time and money establishing community-based conservation institutions, yet many residents were unaware of the existence of the program. Many even thought it was a private company, while others thought it was a government scheme to advance the interests of some people at the expense of others. Thus, few understood it as a community participation project.

As of now, actors in Sinya argue that since villages have boundaries, there is no basis for taking what belongs to one village and giving it to others. This is in reference to the fact that, if Sinya joined WMA, the eco-tourism investment would go to WMA such that Sinya will now have to share its proceeds with other villages.

In terms of trying to resolve the WMA impasse, Sinya had proposed that the village be allowed to have its own WMA. This is a view also shared by certain conservation actors such as Sand County Foundation (SCF)<sup>62</sup> who work closely with Sinya. Observers claim, however, that the wildlife division rejects this idea, claiming that no individual village will have its own WMA; and in any case, Sinya is not ecologically viable enough to sustain a WMA on its own. Sinya retorts that it already has such a WMA in two respects. For one, it has the eco-tourism investment whereby it has leased land to an investor to conduct non-hunting tourism business on village land (although it is illegal). As far as Sinya is concerned, this arrangement is serving the village well. On the other hand, Sinya village houses part of a hunting block that the wildlife division currently allocates to an outfitter for tourist hunting. Thus, as far as Sinya is concerned, it is already a self-sustaining WMA, contrary to the claim by the wildlife division that the village is not ecologically viable on its own so as to be able to host a WMA.

There was another related approach to resolving the WMA impasse at Sinya that could have been invoked, but was rejected. Sinya itself could decide what portion of its land to set aside for the Enduimet WMA, instead of the management of the WMA drawing up a plan that hives off part of Sinya's land for WMA. There are two conflicting opinions as to who rejected this approach. Sinya village officials claim this was their proposal, thus implying

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<sup>62</sup>See footnote 35 on SCF-Tz.

that the wildlife division rejected it, while the AWF who are facilitating the implementation of WMA claimed that this is what they had advised Sinya to do, but Sinya rejected it. To Sinya, however, the rejection of such a solution constitutes a grievance against the WMA, namely, that the government is coercing them into a program they do not understand.

Sinya's claim that it does not understand WMA constitutes an independent grievance. Whenever the wildlife officials and the AWF facilitators of the WMA held a meeting with Sinya regarding Sinya's signing up for the WMA, Sinya would allege that it had not yet understood what the project entails, and hence they were unable to decide whether to join or not. They would, therefore, always ask for more time to decide. Some local government administrators and the AWF facilitators of the WMA aver that this is just a ruse that Sinya is employing. To them, there is nothing about WMA that Sinya does not understand.<sup>63</sup>

To deal with Sinya's recalcitrance, the wildlife division and the facilitators applied a carrot and stick strategy. They directed threats and intimidation to both Sinya and to the eco-tourism investor. The latter was included because, according to popular opinion, the investor was the one who was inciting Sinya against signing up for WMA because he did not want to be dealing with many villages. The inclusion of many villages would mean proliferation of potential investors and hence competition for lease of land from the consortium of villages.<sup>64</sup> As of now, he had Sinya's confidence, and both of them were happy with the status quo. Moreover, the WMA regulations stipulate that only one investor will conduct both consumptive and non-consumptive tourism activities in a WMA. This meant that an eco-

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<sup>63</sup>See, however, the footnote above regarding the question of villages not understanding these wildlife projects.

<sup>64</sup>Assuming that each village was captured by a potential investor vying for the lease to run the WMA, this would trigger a cutthroat competition among investors, leading to higher transactions costs than would be the case when dealing with just one village. In the case of one village, it is most likely that the maxim of "first come, first served" would hold sway.



tourism investor without a sports–hunting component could easily lose out if the WMA management opted to go with sports-hunting (even if the sports-hunting investor did not wish to conduct non-consumptive tourism). During negotiations between the Sinya village council, wildlife division, AWF facilitator and eco-tourism investor, the wildlife authorities remarked that the photo-tourism investment in Sinya is illegal and that they hoped the investor was aware of that. This was a thinly veiled threat that the authorities could easily crack the whip on the investor if Sinya was being difficult because of the revenue they are collecting from that investment. Early in 2006, the eco-tourism investor lost in a court case between him and the hunting outfitter operating the hunting block in Sinya.

The authorities also endeavored to placate Sinya by trying to accommodate some of the issues Sinya was raising, namely, that it does not understand the WMA. Both the wildlife division and AWF arranged for the village council to go on an education trip to other areas that have some WMA-type arrangements so that they could see what happens and how these areas had benefited. The other representatives of Enduimet WMA had already been on such a trip, but Sinya had been excluded because it had not signed up for WMA.

#### **b) The Morogoro WMA-education Trip**

Both AWF and the wildlife division decided to undertake the trip while in a meeting at Sinya. The entourage was to consist of the entire village council. However, the wildlife division decided that the entourage should have about 10 more villagers who were not in the village council. The implementers of the WMA were assuming that the rejection of WMA by Sinya was a creation of the village council. Being the political elites, the council was thought to be benefiting disproportionately from the eco-tourism investment in the village, a

private advantage it wanted to safeguard by not opening the investment arena to other actors.<sup>65</sup> The idea behind the inclusion of non-council members was to involve some people who may not have had stakes in the village's current dispensation in wildlife investments. Nevertheless, things did not go as planned for the WMA implementers. The turn of events worked in favor of the village council.

While AWF was to foot the travel costs of the members of the village council, the wildlife division was to fund the non-council members. On the eve of the trip, however, the wildlife division alerted AWF that it was not going to be able to foot the bill of the non-council members. The AWF was not able to pick up the additional expenses. Therefore, they proposed to the village council that non-council members either be left out, or that the number of council members be reduced to make room for the non-council members. The chairman of the village council decided to go with the latter option. According to the AWF facilitators, he substituted those in the village council who were not in agreement with him with non-council members who shared his views. Thus, the team that went on the trip was solidly behind the chairman of the village council. The failure of the trip to achieve its originators' objectives was now a foregone conclusion.

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<sup>65</sup> There is suspicion that village accounts from these investments are not very transparent; this claim is a sub-text denoting misappropriation of funds. Participants in a Community-based Natural Resource Management in East Africa who made a field trip to Sinya held a formal meeting with Sinya community. During the meeting, they asked how the income from eco-tourism was allocated and spent. The report indicates that although the villagers described some of the uses of the funds, some of the questions about spending procedures were not clearly answered. "it was clarified in later discussion with the resident tour operator that due to financial abuses and based on agreement with Ward Councillor for Sinya, payments to the village have been suspended (although fees are accruing in a separate account maintained by the operator) until after the forthcoming election..." (ACC, et al 2004:12). Similar allegations regarding use of these funds have also been reported in other villages with a turnover of good investments similar to those in Sinya (see, for example, the case of Ololosokwan village [Ololosokwan, 2003]).

The objective of the trip was for the villagers to learn the potential benefits of a WMA; but once in Morogoro, the entourage seemed to have been learning how the WMA was not beneficial to them. The facilitator claimed that he had his own contacts within the group, who, even though they were not for the WMA project, were, nevertheless, updating him on what was going on within the group. The facilitator claimed that the chairman of the village council and his inner circle would organize a meeting with a clique of his trusted lieutenants every evening. In these meetings, they decided that the group was still not convinced that there was value to be gotten from WMA.

Although the chairman of the village council did not confirm the intrigues in Morogoro referred to by the facilitator, he at least was candid that the trip convinced them that WMA had nothing to offer them. Their critique of WMA after the trip was based on several factors. One of them was that in Morogoro, it rains daily, and this means that they operate in a different ecological setting. To emphasize the ecological difference between the two villages, the chairman pointed out that the place they visited had grass that was so tall that it could conceal a very big truck. On this basis, the chairman wondered aloud: “will the WMA bring rain?” Regarding another comparison between the two regions, the chairman claimed that the area they visited had experience with WMA for almost 10 years, yet it was very backward compared to Sinya. To them, this underdevelopment was not a good example of how beneficial WMA can be. Their other discouraging observation was that the people they visited were neither what can be called pastoralists nor cultivators. The village chairman expressed surprise at how those people were able to survive. It was surprising because only about 50 people own livestock, while farmers cultivate about one acre of land. To illustrate his bewilderment, he recalled that at one point his group was so hungry and yet

he could not easily get two goats to slaughter for it.<sup>66</sup> Thus, the lesson learned from the Morogoro trip was that the proposed WMA would not be more worthwhile than what they already had.

On returning to Sinya, the villagers, AWF, DGO, and the government functionaries in the division held a meeting together. While the village sources claim that it was in this meeting that they petitioned that they part ways with the WMA, the AWF facilitator told me that, during this meeting, Sinya asked that it be given time to make a decision. Subsequently, Sinya representatives wrote a letter in which they informed him that they were not willing to sign up for a WMA. I could not establish the number of villagers attending the meeting. While village sources claimed it was about 300, AWF puts the number at 50, and claims that these were the followers of the chairman.<sup>67</sup> The pattern of decision making notwithstanding, the point is that, even after being taken on an educational trip to learn about WMA, Sinya still decided not to sign up for WMA. Finally, both wildlife division and AWF decided to go ahead with the registration of the WMA without Sinya. In the meantime, the other villages had formed a CBO and drafted a constitution. They then applied for Authorised Association (AA) status so that the WMA could become operational.

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<sup>66</sup>This claim is confusing because the trip was being funded by AWF and it catered for all their expenses. It was, therefore, not clear why the chairman needed to buy goats to feed his team.

<sup>67</sup>In another meeting of Enduimet WMA CBO officials, the divisional officer seemed to speak along the same lines regarding these meetings. He averred that they had been conversing with Sinya for a long time, but every time they met with the same people until they started wondering whether the village had any other members. The point here then is that there was some gerrymandering that seemed to have been taking place regarding the composition of villagers who would attend meetings on WMA at Sinya. This is a difficult issue to fathom because, ordinarily, one should not expect this to be an issue since village meetings are open to everyone, including the antagonists of the chairman, provided they are willing to attend. Furthermore, because these are small villages such that almost everyone who cares to know can be aware of when a meeting is taking place, it is difficult to figure out how the chairman was manipulating attendance--at least at the village level.

#### **IV) Explaining Acceptance of the Proposed WMA in Enduimet Division**

The response by Sinya village and a section of villagers in Irkaswa can be said to be consistent with what would be expected of villagers confronted by the kind of WMA project analyzed in chapter two. It is consistent with the argument that parties contracting for property rights will sign up for transformation of property rights if the transformation leaves them better off than they were in the previous property rights dispensation. The preceding chapter suggested that the WMA project was theoretically unacceptable to communities. In various seminars that were held to discuss the WMA project, community representatives stated as much. In practice, some communities lived up to this expectation. They refused to adopt the project in the way it was constituted. The response of the villages that bought into WMA presents a problem, however. Their acceptance of the project would seem to be contrary to both theory and empirical observation, since some of their counterparts rejected WMA. What then accounts for the villagers' acceptance of a project that is apparently a liability to them?

Situations in which African communities adopt a strategy that clearly seems irrational have been explained in various ways. Explanations range from those that see communities engaging in acts of desperation, to those that see communities as acting in ignorance. Other explanations portray communities as not being interested in the project, but nevertheless signing up to engage the state system in a circus. In a study of devolution of property rights in forestry in the Gambia, for example, Schroeder (1999) suggests that communities elected to participate out of desperation. The way the Gambian community forestry project was executed amounted to extending, rather than devolving, central control over resources and communities alike. Community participation as defined in the program contracts, Schroeder

contends, "...involved the community committing itself to a broad set of interventions with project staff, and opening itself up to inspection and monitoring at the government's discretion" (Schroeder, 1999:16). From Schroeder's account, it can be deduced that communities should have rejected the devolution project, yet they agreed to take part in the project. In an attempt to interpret the community response, Schroeder asks, "Have community groups, or their leaders, willingly shouldered the burden of decentralized forest management plans, or are the conditions imposed by the community forestry contacts simply a better alternative than having no legal access to commercial exploitation of local forests at all?" (Schroeder, 1999:17.) It can be observed from the foregoing that communities in Gambia responded to the forestry project within the context of limited alternative opportunities. They were making choices under desperate conditions. This kind of scenario is evident in other areas, such as the environmental justice struggles.

While it would be expected that poor blacks and indigenous peoples in America should be at the forefront of struggles for better environmental regulation and quality, this is not necessarily the case. These communities mostly operate in a trade off between economic improvement and environmental quality, in which the latter is likely to be sacrificed (Bullard and Wright. 1987; Neiman and Loveridge. 1981; Gover and Walker, 1992). As Gover and Walker (1992) argue, tribal peoples are compelled by economic exigencies to sign up for commercial solid waste landfills, the environmental risks and hazards notwithstanding. Poverty, low educational opportunities, and few job opportunities lead them to look at the solid waste industry as a form of economic emancipation. Gover and Walker's submission, like that of Schroeder, is an argument about lack of alternatives to what is otherwise a bad choice. Nevertheless, other observers contend that such choices are made out of ignorance.

Actors, especially NGOs critical of the way WMA is set up, hold the view that communities that have bought into the WMA proposal do not understand what is at stake. During one villagers' meeting on implementation of WMA, a Member of Parliament (MP) opposed the participants' inclinations towards rejecting the WMA project in its current format. The MP argued that communities have struggled for property rights in wildlife for a long time and WMA now provides that opportunity. Consequently, he averred, to reject WMA is to confirm the continued domination of the sector by the wildlife division. The rejection of WMA is an approach that the people of his area would not subscribe to, even as they admit that WMA has some limitations. In his people's view, he submitted, WMA should be accepted and then communities would struggle to improve it from within.

Some NGO actors dispute this approach. In a conversation this researcher had with one NGO actor, the actor argued that the sentiments of the MP were erroneous. It was erroneous because once communities yield, it would be difficult for the wildlife bureaucrats to cave in to communities' clamor for reforms of WMA regulations. Another actor claimed that communities that are applying for the implementation of WMA are wasting their time because they cannot afford to meet the conditions that the wildlife division requires in order for it to approve their WMA. The actor further claimed that villagers who understand the complexity of the issue have come to the conclusion that to meet the conditions set by the wildlife division, a village requires the services of twelve professors in different specialties. Given that no village is anywhere near this mark, and, further, that because no villager is

prepared to pay the fines or face jail terms for infraction in WMA once it is set up, villages applying for WMA are misguided.<sup>68</sup>

There is also a theory that suggests that villagers signed up for WMA not because they wanted it, but to fool about with the establishment. Songorwa (1999a and 1999b) has argued that communities are not interested in wildlife conservation. Premising his argument on the fact that rural communities in Africa are caught up in a poverty trap, Songorwa (1999b) posits that communities have no vision for wildlife conservation and, if they nurse any, it is to exterminate wildlife. The reason for this disinterest is because wildlife is a liability to them, yet communities reap no benefits from wildlife. The poor relations between communities and state wildlife conservation authorities also mar communities' interest in wildlife conservation. Consequently, when communities allegedly cooperate with wildlife authorities in the conservation project, it is to fool them. Songorwa (1999b) cites the case of Selous Conservation Project (SCP), where communities were asked to elect village representatives to the project and villagers voted for people who were their enemies. In the villagers' imagination, those elected would be the ones to be beaten if anything happens to the wildlife. Thus, instead of the villagers rejecting the project, it was being transformed into an opportunity to settle local scores. Songorwa's argument is not far-fetched; it has precedents.

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<sup>68</sup>The attitude that communities can march blindly on the path of destruction is a theme that is also captured by one of David Western's interlocutors among the Maasai thus: "But Amboseli will not survive even if the Maasai are given the park. They don't know what land titles mean. When they get a title deed they sell it for money and think they can still keep the land" (Western, 1997:107). See also Esther Mwangi (2003) and Rutten (1992) with respect to the individuation of group ranches among the Maasai of Kajiado, when such individuation looks quite irrational from the point of view of land viability. Land in Maasai Kajiado district is semi-arid and it is useful when utilized as long rangeland instead of as small parcels.



The phenomenon of Africa's leaders getting rousing receptions from the public whom they have impoverished can be seen as posing a contradiction. It would be expected that people in Africa's ruralscape would either voice disapproval or exit (see, for example, Hirschman, 1970) upon coming into contact with their political leadership. In most cases, this reaction is not the one that results. Scenes of cheering multitudes of people appear to be the norm. Why this unexpected response? If it is assumed that people are forced into loyalty because of various structural odds besetting them, why then don't they just keep silent and ignore the leaders instead of showing their approval to the leaders by cheering them? The question, however, is whether they cheer them as a signal of approval and love.

Babu (1981:40) contends that they cheer their leaders because they fear them. Thus, they employ cheering as a weapon to cope with an immensely intimidating political leadership (see also Scott, 1985; Haugerud, 1995; and Mbembe, 1992, 2001 on the mockery of figures in power as a way of disarming the powerful through indication of a sense of intimacy with the leaders). While Songorwa's observation, therefore, has some merit, it does not, however, explain the case of communities implementing the proposed Enduimet WMA. Among the communities agreeing to implement the project, there is a sense of enthusiasm that shows they are interested in the project.<sup>69</sup> How then do we account for the acceptance by Enduimet communities to implement the WMA project?

Several explanations account for why villages in Enduimet agreed to implement WMA. The explanations suggest that, contrary to Songorwa's contention, communities are

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<sup>69</sup> In every village consenting to WMA, there were expressions of frustration in the delay in implementing WMA (see discussion on consenting to WMA because of expedience).

interested in wildlife conservation.<sup>70</sup> These explanations include expediency, proto-WMA imperatives, and the limitations of anti-WMA coalition.

### **Consenting to WMA Out of Expedience**

Proponents of WMA in the consenting villages posit that communities are better off implementing the proposed WMA project than in rejecting it. Both political and administrative leaders and the rank and file familiar with the WMA project support this approach. This expediency view has become self-perpetuating, with the formation of the preliminary organs at the village and inter-village levels to implement the WMA project. Villagers presiding over these organs and their allies constantly frame their justification for consenting to the WMA project in terms of what makes the communities better off than they are without WMA.<sup>71</sup> The stand taken by the Member of Parliament for this area in one of the village seminars on WMA was an argument about expedience. The proposition that communities' rejection of WMA will only serve the interests of wildlife authorities and not the villages suggests that communities are better off consenting to the WMA project. This attitude is founded on the assumption that communities have nothing to lose in adopting the project. Either the limitations in the WMA regulations (as covered in the preceding chapter) are wished away, or it is argued that contentious issues can be rectified as communities implement the project.

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<sup>70</sup>It is instructive to note that even those villages that objected to WMA did not do so because they were not interested in wildlife conservation. To the contrary, their spirited objection to WMA was precisely because they had strong vested interests in the wildlife conservation regime that would ensue. Their objection is, therefore, paradoxical: objecting because they are interested in the project.

<sup>71</sup>These actors also have a personal interest now. If the project takes off, they will attain a new social status by virtue of being the proprietors of the WMA project.

To some villagers, WMA is too good for them. This view translates to the belief that the delay in implementing WMA is caused by wildlife authorities envious of ceding to communities wildlife benefits hitherto enjoyed by the bureaucrats only. This attitude, therefore, speaks of a mindset that sees communities as only benefiting but not losing in the WMA project. Members of one village environmental committee argued that Enduimet WMA has not been approved long after it submitted its WMA paperwork to the authorities because wildlife bureaucrats are apprehensive of community involvement in wildlife entrepreneurship. The inclusion of communities will deplete the “cornmeal” erstwhile appropriated by the bureaucrats only. This apprehension, villagers averred, led the bureaucrats to shelve the forms in a drawer.

In yet another village, members of the environmental committee wanted to know if I had any idea why their WMA has not yet been approved. They were of the view that the implementation process was dragging on. They claimed that, in delaying the approval of the WMA, the government was wasting their time. Committee members expressed suspicion that the government was not devoted to devolution, hence the dilly-dallying with approval of Enduimet WMA. The administrator of Enduimet Division expressed similar sentiments during a consultative meeting between officials of Enduimet WMA, district natural resources officers, and AWF. The administrator said that villagers now doubt that WMA project will ever be implemented. There was also a clear impression among villagers who held no official titles proximate to WMA (that might influence their opinions) that they are anxious to have WMA implemented.

When I asked some villagers where their support for WMA leaves the grievances other people elsewhere have about the WMA regulations, the response was quoted again in terms

of expedience. It was argued that, for a long time, the government did not entertain the idea of devolving property rights in wildlife to communities. The WMA project, however, shows that the government is now becoming more open to the idea. Consequently, it would be better for communities to seize up the opportunity and get a foothold into the wildlife largesse and then sort out from within the details that are currently viewed as unacceptable. This approach suggests that, to the consenting villages, the idea is not to get the ideal, but the feasible. Their response was thus influenced by what they thought would give them greater mileage in an area in which they have been trying to secure a foothold. Communities had already put up both legal and practical structures to enable them to conserve wildlife and appropriate its benefits. Accepting the WMA project was viewed as a step towards achieving this pre-existing objective.

### **Proto-WMA Framework in the Villages**

The proponents of the WMA in Enduimet villages had the option of defending the regulations (as the wildlife bureaucrats did, vide, preceding chapter), but they did not. Instead, they were willing to concede that the project has some undesirable elements, but, even then, its rejection was not an option because the idea of WMA is consistent with their pre-existing framework regarding the wildlife sector. The WMA phenomenon did not confront communities with a call that was beyond their current aspirations. WMA spoke to a phenomenon—community appropriations of wildlife largesse—that was well under way among the target villages. Two aspects of community life attest to this. One, over the years, communities have nursed grievances against wildlife damage and in the light of government failure to rectify the situation, they argued that they should then be co-proprietors of the

wildlife industry. The WMA project would, therefore, easily fit within the framework of what they held to be their entitlement.

The second aspect, is a consequence to the foregoing. Prior to the formal introduction of WMA, communities had invested in structures geared towards husbandry and securing of benefits from wildlife, and natural resources in general. For example, villages had formulated by-laws providing for the protection and extraction of benefits from wildlife. As will be commented upon later, although some of these by-laws are controversy-prone, the controversy can only amplify, not diminish, communities' claim to a WMA spirit. The problematic aspects of the by-laws can only suggest that villagers would be willing to buy into a project that could regularize the application of these by-laws. The WMA project, therefore, speaks to the area of wildlife conservation that communities were already addressing. Although the communities' approach was in certain ways somehow in conflict with the legal regime extant, it answers the question of communities' interest in wildlife conservation in the affirmative (see the contrary view by Songorwa, 1999b).

Thus, as one village executive officer told me, communities were ahead of the government in conceptualizing the WMA phenomenon in their area. To this extent then, villagers should have no difficulty in consenting to the WMA project. The situation extant on the eve of the introduction of WMA thus accounts for why certain communities may be expected to act contrary to the expectations of property right theory and take whatever package the state would be dispensing. While observers could argue that communities are going to be worse off, communities themselves may hold a different view in the event that they evaluate the project in the long term perspective. They may feel that they have invested in the wildlife sector for many years and, over time, they could hopefully surmount the

predicaments besetting the WMA project. Their past pro-WMA initiatives were reflected in the legal and land-use strategies they had put in place.

### **Pre-WMA Village Land-use and Wildlife Conservation Initiatives**

Pre-WMA village land-use plans included wildlife as a land-use activity. The process of land distribution to village members requires that the village have a land-use plan. Land is allocated for such uses as farming, residence, businesses, social services, and natural resources management. Table 1 shows the village land-use allocation in relation to wildlife.

Table 3: Percentage of land allocated to wildlife in some villages.

Village	Total acreage	Wildlife/livestock/forest	% of total
Ol molog	31, 370	20,029	63.8
Lelangwa	22, 477	12, 857	57.20
<b>Kitendeni</b>	??	??; corridor	??
Irkaswa	10, 868	4940	45.45
<b>Kamwanga</b>	2,470	2,153 ??	87.16 ??
Sinya	??	No farming, hence all.	100

As is evident in Table 3, all the villages have dedicated a large part of their lands for wildlife management. Some villages such as Ol molog even separate land for livestock and forest from that of wildlife/WMA (12,029 and 8,000 acres respectively). Thus, there is a clear land-use regime that takes cognizance of the presence of wildlife and the need to have wildlife management as part of community activity. This recognition was also given legal expression through village by-laws.

### **Pre-WMA Legal Initiatives.**

Village by-laws are made by each village pursuant to section 163 of the Local Government Act (No. 7 of 1982). They are approved in a village assembly, attended by all adult members of the village. These by-laws are then taken to the district council for approval, after which they become legal and enforceable under the laws of Tanzania. In these village by-laws, there is ample evidence that the villagers prioritize wildlife management as they do other economic activities, such as pastoralism. These village by-laws reveal the following about wildlife: a conservation impulse, a sense of responsibility for wildlife protection, a desire for villagers to benefit from wildlife, and the need to be compensated for wildlife damage. In the following section, we review each of these provisions and show that the edifice of WMA in itself was not strange to the villagers. This means that any rejection of WMA should not be interpreted in terms of villagers objecting to the wildlife estate, as Songorwa (1999a, 1999b) suggests. Villagers should be seen as objecting to the terms under which the WMA phenomenon is being executed.

### **A Conservation Impulse**

There are a lot of prohibitions against activities that are detrimental to wildlife survival. These prohibitions seek to secure a habitat for wildlife. The by-laws prohibit deforestation and provide for afforestation efforts. With respect to deforestation, penalties are prescribed for those cutting trees without any valid reason. In the village of Ol molog, for example, the by-laws state:

Any person who shall destroy the environment by cutting trees aimlessly is guilty and his penalty is 10,000 shillings for each tree (and that) a person who shall graze cattle in a place where trees are planted and ruins them shall

be fined 5,000 shillings for each tree and to plant the tree s/he destroyed (Olmolog, n.d.).

In another village, Irkaswa, villagers are forbidden from cutting trees aimlessly, including trees they themselves have planted. The by-laws state that

any person who shall be apprehended having cut an immature indigenous tree shall be fined 5,000 shillings for each tree and have the implements s/he used confiscated together with the tree s/he had cut.

The by-law further states:

A person who will have been found to have cut a tree s/he planted shall be fined 5,000 shillings and to plant two trees at the place s/he shall have cut those trees and tend them until they mature (Irkaswa, n.d.).

Other villages, such as Kitendeni and Lelangwa have instituted comparable by-laws to safeguard against deforestation.

Similarly, afforestation efforts are called for and protected in the by-laws. In certain cases, each household is required to plant about ten trees during the rainy season, and failure to do so results in a fine. In Kitendeni village, for example, the afforestation by-laws state that “Every year, each person shall plant ten trees, and whoever does not plant shall be fined sh.10,000 or be prosecuted before the ward council or council of elders and to plant the trees” (Kitendeni, n.d.). Similar by-laws on afforestation are to be found in other villages, such as Lelangwa and Irkaswa. For those who plant trees, their efforts are protected in the by-laws. People who let their livestock into areas where trees have been planted, for example, incur a fine for each destroyed tree; in addition, they are required to plant another tree. In the by-laws for Irkaswa village, for example, it is stated:

A person whose livestock shall destroy a tree planted by another person shall be fined 5,000 shillings and plant two trees for each destroyed tree at the place that the destroyed trees had been planted (Irkaswa, n.d.).



In Lelangwa, the by-laws state that “A person who destroys another person’s tree is guilty and shall be fined 10,000 shillings” (Lelangwa, n.d.).

The impetus to conserving the environment is also evident with respect to areas meant for wildlife sustenance. Efforts are made to conserve such wildlife habitats as wildlife migration routes by placing them out of bounds of human encroachment. Even legitimate human activities such as cultivation are prohibited in wildlife corridors. Those violating this prohibition incur a fine and eviction from the wildlife corridor. In the by-laws of Kitendeni village, a corridor is defined as a special area set aside by the village for purposes of grazing livestock and wildlife migration. The corridor is protected from any farming or building activities. Any contravention of this by-law attracts a fine of Sh. 40,000 and eviction of the person(s) concerned from the corridor (Kitendeni, n.d.). The village that shares the wildlife corridor with Kitendeni, Irkaswa, is more elaborate in its provisions for the conservation of the corridor. As will emerge later in this chapter, this concern with details over the corridor in Irkaswa village is perhaps a reflection of the fact that it is in Irkaswa where the challenge to the existence of the corridor is greatest, unlike in Kitendeni, where there is a near-unanimity on the need for its existence. In Irkaswa, the by-laws are stricter; they even address intent to commit crime. The by-laws state:

Any person found loitering in reserved land while possessing instruments of photography, axe, traps, bullets, matchet or any weapon that can destroy natural resources in the following areas, Olokunoni (also known as Kitendeni corridor) following the corridor boundary, Osinoni upto Kamwanga stream together with the indigenous forest, will be fined 50,000 shilling (Irkaswa, n.d).

Thus, the idea here is that even though one has not yet harmed the conservation area, the mere possession of instruments capable of effecting harm on the natural resources in the

corridor is itself enough to convince the village that the individual intends to do harm.<sup>72</sup> By holding such ideas, the village is indicating that it is not taking chances with respect to the sanctity of the corridor. This precaution is pushed further to include mere presence in the wildlife corridor even without tools capable of destroying natural resources. In this respect, village by-laws state:

Any person found loitering in reserved land, without instruments that can destroy natural resources, or instruments of photography in the area of Olokunoni, following the boundary of the corridor, Osinoni, upto Kamwanga river together or next to the indigenous forest, will be fined 10,000 shillings or public labor worth that amount (Irkaswa, n.d).

The provision in this by-law can be seen as an attempt to dissuade people from entering the corridor, reinstating the sanctity of the corridor and thereby minimizing the risk of subverting the purposes of the corridor.

This sense of discipline in the protection of natural resources is evident in other ways, too. One of these ways can be deduced in the requirement for the villagers to protect the natural resources of the villages. This requirement for protection of natural resources entails even reporting crimes against natural resources, whether actual or potential. Failure to report such crimes on conservation constitutes committing a crime of concealment of destruction of natural resources, which results in a fine. In one village with such a by-law, the following is required:

Any resident of the village who may suspect, see or witness destruction of natural resources is bound to report to village leaders nearby such as sub-village, village office or police. Any person who does not relay such a report to the foregoing places will be deemed to have participated in the crime and shall be fined 25,000 shilling or subjected to public work worth that amount (Irkaswa, n.d).

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<sup>72</sup>This conceptualization also mirrors what is contained in the Wildlife and Conservation Act (URT,1974 (sec 8)). The section of the act restricts the carriage of weapons in game reserves.

The conceptualization of the people's responsibility towards the natural resource assets of the village in this regulation seems it is borrowed from the language of treason laws in the penal code of Tanzania. More specifically, however, the conceptualization of people's responsibility echoes the constitutional requirement of all Tanzanians to protect the resources of the state. The Constitution states:

Every person has a responsibility to defend natural resources of the Republic of Tanzania, national property and all property collectively owned by the people (of Tanzania)...(and further, that) all people are by law required to safeguard properly the property of the republic and property that is collectively owned, to fight all sorts of wastage and ubadhilifu,...(URT, 1977 (2000) sec. 27 (1), (2)).

As will emerge from the discussion on WMA at the village level, the provision of such legislation in Irkaswa is remarkable. This is because, of all the nine villages of Enduimet division, it is in this village where there are protracted internal wrangles over natural resources, especially over access to the corridor reserved for livestock grazing and wildlife migration. It can thus be suspected that the pro-corridor forces within the village, and their external supporters such as conservation agencies like AWF, were using the opportunity provided by the legal requirement for a village to institute by-laws to leverage the struggle over the corridor towards their preferred options. Once the village institutes laws protecting natural resources, it would be easy for the pro-corridor faction to secure their preferred option for the corridor, namely, having a corridor that is also legally protected from invasion.

A similar sensitivity to conservation emerges with respect to the villagers' approach to problem-animal control. Perhaps, aware that the phenomenon of problem-animal control can be used as an excuse for poaching, destructive animals are treated in a way that suggests that, contrary to popular opinion, villagers are not out to eliminate such wildlife. The by-laws provide that such animals should first be restrained, chased away, and only killed as a last

resort. These Lelangwa village by-laws, which also echo those of other villages such as Olmolog, Kitendeni and Irkaswa state:

Regarding wildlife that destroys crops, livestock and people, villagers should first protect the farms and livestock and if that does not work, the animal is killed at the very place they are causing the destruction (Lelangwa, n.d.).

This by-law would seem to be even more restrictive than what is contained in the national wildlife act, which states:

Nothing in this Act shall make it an offence to kill any animal in defence of human life or property or for the owner or occupier of such property ...to drive out or kill by any means what-so-ever any animal found causing damage to such property (URT, 1974, sec 50).

Thus, the wildlife act does not require the villagers to handle problem-animals with gloves. One would expect that the villagers would have been quick to take advantage of such a provision to publicize their grievances against the wildlife conservation regime in vogue. Hence, to the extent that the wildlife act allows the killing of problem-animals, and at a time when communities are not deriving any concrete benefits from wildlife, the self-imposition of such a regime of by-laws by the villagers is quite telling.

Although the village by-laws regime is imposed on the villagers from the top through the Local Government Act (URT, 1982, sec. 163), the content of these by-laws is generated locally and has to be approved by a village general assembly before they are given a seal of approval by the district authorities. Thus, they can be said to enjoy the courtesy of the villagers' imagination as to how the villagers ought to be governed.<sup>73</sup> The content as shown above can then be understood as revealing a conviction among the villagers that wildlife will

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<sup>73</sup>When I asked in some villages whether people actually discussed and conceded to these by-laws, they answered in the affirmative. On probing further whether there were some issues that provoked objections, the respondents referred to a by-law that had required that a husband who beats his wife at night be fined 15,000 shillings. This by-law was rejected on the premise that it was too harsh. This citation suggests that the by-laws were, at least, subjected to village-level discussion and that there was an opportunity to purge objectionable provisions in the by-laws.

somehow be of use to them, even if it is in the distant future. Perhaps, it is also on this premise that the conservation impulse disclosed by the foregoing legal provisions is given expression through actual by-laws that seek to protect the products of that conservation. Wildlife is one such product.

### **Wildlife Protection**

Village by-laws protect wildlife in various ways. The by-laws prohibit poaching of wildlife and state that poachers should be arrested and prosecuted. As indicated above, the by-laws conceptualize threats against wildlife in terms of crimes that have already been committed, and those likely to be committed. The by-laws criminalize possession of weapons in reserved wildlife areas if one has no legitimate cause for possessing such weapons. The implication here is that the villages do not have to wait for one to kill wildlife for that person to be arrested. This attitude is again remarkable given that benefits from wildlife can only be expected in the future, not in the present, and even that future was not promising. Perhaps, the only benefits that can be said to accrue from these efforts are the fines imposed on the poachers. In the by-laws of Lelangwa village, for example, it is stated that “anybody who shoots a bird without a permit from the village government commits a crime and its fine is 15,000 shillings” while “a hunter who uses dogs or wire snaring if apprehended will be fined 30,000 shilling” (Lelangwa, n.d.).<sup>74</sup>

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<sup>74</sup>Yet, this is a tricky issue because poaching is a crime whose penalties are prescribed in the Wildlife Conservation Act (1974). It is not, therefore, clear whether the villagers can arrest a poacher and discharge the same on extracting a fee without referring the poacher to the relevant authorities for the provisions of the wildlife act to take effect. It is only in one village, Irkaswa, where the by-law does not institute fines, but rather provides that poachers or those who kill wildlife be arrested and taken to court (Irkaswa, n.d.).

To institutionalize the protection of wildlife, villagers have established the institution of village game scouts. Some villages have trained some of their inhabitants as game scouts to spearhead the professional husbandry of wildlife in village lands. These game scouts are occasionally paid from village coffers whenever the village receives some revenue from tour operators conducting photo-tourism activities in village lands. Otherwise, the services of game scouts are generally offered for no pay. When I was conducting fieldwork in 2004, there were two incidences in which village game scouts arrested poachers after having stalked them for a whole night. I had talked to some of these game scouts and it was clear to me that they had no job description from the wildlife division, and that the wildlife division rarely bothers about them. When I asked them why they should then be bothered to protect wildlife, they intimated that they are inspired by the hope that something beneficial might materialize in the future.

Villages use these game scouts to monitor licensed hunting. Village by-laws require that those licensed by the wildlife division report to village authorities before undertaking their hunting ventures on village land. The by-laws empower village authorities to authenticate that hunters are legally allowed to hunt, and also that they are complying with the terms of their hunting permits. In turn, such hunters would be given village game scouts to accompany them into the bush. Hunters who would not report to the village authorities are liable for a fine or prosecution. In Ol molog village, for example, the by-law states:

any hunter with a hunting permit must pass through the village (office) to show the permit and to be given a game scout from the village to work with. Failure to do so will incur a fine of 50,000 shillings (Ol Molog, n.d.).

The by-laws for the other villages such as Kitendeni and Lelangwa provide for similar scenarios, as well as the further provision of arraignment before a court of law for those culprits who would fail to pay the fine (Kitendeni, n.d.; Lelangwa, n.d.).<sup>75</sup>

These protective measures, though legally controversial and perhaps without active support from the relevant wildlife authorities, sometimes achieve their ends for conservation. In one interview with village game scouts, they claimed that the village government in Lelangwa at one time wrote to the DGO that it suspected that some hunters' licenses were illegitimate. The villagers claimed that, while they did not get any feedback from the DGO, they noted some decline in such licenses during their subsequent inspections.

The villagers' commitment to protect wildlife is a clear testimony that they consider wildlife a beneficial resource. Even when there are no legal structures to enable villagers to benefit from wildlife, and even though some of the laws in force actually prohibit villagers

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<sup>75</sup>It is not clear whether this is within the village ambit because the mandate the villages are assuming is not explicitly provided for in the Wildlife and Conservation Act (URT, 1974). Indeed, according to the act, it could be illegal for the village to interfere with a hunter who is legally permitted to undertake hunting activities in their village. The obligation of the licensed hunter to the private landowner ends immediately the latter is furnished with the permit authorizing the hunter to conduct tourist hunting on that land. It is not explicit whether serving a copy of that authority should be done prior to commencing hunting activities or on demand. The private landowner, however, need not consent to these hunting activities. The private landowner would thus be the one in breach of the law in the event of obstructing the hunting activities after the landowner has been served with a copy authorizing the same. The mandate to regulate hunting is conferred on an authorized officer, who is normally a game officer employed by the division of wildlife. Village game scouts only become involved if the hunting activities occur in an area where the village has been mandated to preside over the hunting activities as an authorized association (URT, 1974, sec. 40 (2-3); MNRT, 2002a: sec. 13 (3), 14 (1)). Thus, the furthest these by-laws could go is to have effect on resident hunters, certainly not tourist hunting. The former is regulated by district councils, while the latter is regulated by the wildlife division. Thus, although the act requires a hunter to get the consent of a private landowner prior to hunting on private land (sec 40 (1) (b)), by declaring a hunting block on a private land, the director of wildlife effectively neutralizes this provision in the act. This is so because the director can authorize hunting to take place without the consent of the landowner (see sec. 40 (2) and (3) (c)).

from initiating wildlife enterprises without the permission of the director of wildlife,<sup>76</sup> the villagers have not been dissuaded from thinking that they can benefit from wildlife. Consequently, they have made provisions in the by-laws to ensure that villagers benefit from wildlife.

### **Wildlife Benefits**

Villagers conceptualize their involvement in wildlife conservation as an activity that should yield benefits to them. They have instituted regulations to ensure that they reap benefits from wildlife. Some of these regulations are, nevertheless, controversial in light of the laws that govern the wildlife sector. Extant national wildlife laws are of higher legal authority than village by-laws. Among the less controversial village by-laws are those that require operators of wildlife enterprises to contribute to village development. Two types of tourism enterprises are dominant: tourist hunting activities and photo-tourism. The former are authorized by the wildlife division, while the latter is controlled by the villagers, except in cases where the wildlife director has declared village land to be a hunting block. If a village is declared a tourist hunting block, photo-tourism enterprises are prohibited, unless with permission from the director of wildlife (MNRT, 2000a). The villages under discussion here are in such areas.

Thus, the villagers' requirement for wildlife entrepreneurs to contribute to development presupposes that investments by photo-tourism operators will have been authorized by the

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<sup>76</sup>These are the wildlife enterprises that are illegal under the Tourist Hunting Regulations (MNRT, 2002a).



director of wildlife.<sup>77</sup> Although villagers have the right under the Village Land Act, 1999 (URT, 1999b) to control land-use activities on village land, the wildlife division has promulgated the Tourist Hunting Regulations (MNRT, 2002a) that usurp the villagers' right to control certain land uses in villages in which the director has established a hunting block. This has led to a collusion of jurisdiction that has not yet been resolved; nevertheless, it is acting against the interests of villagers.<sup>78</sup>

For villages without tourist hunting activities, the requirement for wildlife entrepreneurs to contribute to village development is within the villagers' mandate (URT, 1999b). To this extent, villagers have proposed by-laws to facilitate extraction of revenue from wildlife enterprises. Tour operators are expected to report to the village authorities before embarking on their operations. Those not doing so are liable for a fine. In Kitendeni village, for example, the by-laws legislate that "Every company entering the village for wildlife-related businesses should pass through the village office and pay 25%" (Kitendeni, n.d.).<sup>79</sup> Tour operators are to be charged fees for entry into the village, camping on village land, and for every tourist they host on village land. They are also required to employ tour guides from among the villagers. Village authorities can extract revenue from tour operators through penalties if the latter leave their campsites dirty.

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<sup>77</sup>To a certain extent, this requirement is consistent with the wildlife division's tourist hunting regulations. The regulations for re-allocation of a hunting block require hunting outfitters to have contributed to community development projects in their areas of operation (MNRT, 2002a). There are, however, no benchmarks on what this contribution entails, and a low rating in this aspect can always be compensated for in high ratings in other aspects that are considered jointly with the development component.

<sup>78</sup>Legal commentators are of the view that the villagers' right to determine land use activities should take precedence over the director's regulations because the land act, as a legislation of Parliament, is superior to the wildlife regulations that are made by the minister pursuant to an Act of Parliament.

<sup>79</sup>It is not specified in the by-laws what this percentage represents.

Villagers also seek to generate revenue from wildlife enterprises in ways that are rather controversial. These ways include charging hunters for every animal hunted, charging tourist vehicles entering village land, charging for game scout services, and claiming a stake in trophy proceeds. With respect to tourists paying a fee for every game hunted, by-laws for Lelangwa village state:

every hunter with a permit shall pay to the village government 20,000 shillings for a wildbeest (pofu), zebra, buffalo, nyumbu, and antelope 10,000 shillings. In the event of not paying, shall be prosecuted in a court of law. Also, the village government reserves the right to alter these amounts depending on circumstances (Lelangwa, n.d.).

Charging hunters for every game hunted is problematic because hunters are licensed by the division of wildlife and are expected to pay game fees to the wildlife authorities. Thus, it is difficult to see how the villagers could extract this fee from the hunters, let alone succeed in prosecuting those who do not pay as the by-laws require.

Similarly, villagers' expectation to generate revenue from trophies accruing from problem animal control is problematic. Ol Molog village legislation provides that trophies from problem animal control should "be taken to the relevant authorities. 10% of proceeds from those trophies be given back to the village" (Ol Molog, n.d.). The Wildlife and Conservation Act holds that these trophies belong to the state. The Act (sec. 50 (2) (c)) states:

Any person killing an animal in defence of life or property shall forthwith hand over to such Game Officer any trophy removed from such animal, which trophy shall be the property of the Government (URT, 1974).

There is no provision for villagers to retain part of these trophies. The only opportunity open for villagers to access proceeds from these trophies is to apply to the minister of finance, who is the only one who can instruct the director of wildlife on the disposal of all trophies (URT,

1974, sec. 69). Some villages such as Lelangwa seem to understand this procedure. In their by-laws regarding trophies from problem-animal control, they are content with handing them over to the relevant authorities. Interviews with villagers on wildlife largesse, however, suggest that if villagers had their way, the view on these trophies held by Ol Molog village would hold sway.

Nevertheless, in both the controversial and non-controversial benefit extraction strategies, what communities seem to be asserting is that they need to be involved in wildlife benefit sharing. The villagers' rationale for this involvement, as stated in the by-laws of one village, is because they "are the protectors" of wildlife (Kitendeni n.d.). Thus, communities perceive the justification for benefiting from wildlife not simply because the wildlife is available in their lands, but also because they contribute to its production. This contribution to the production of wildlife is not just in the way communities protect wildlife, but also in terms of how wildlife impose costs on communities. It is in recognition of this latter fact that communities legislate in the by-laws that some of the proceeds they receive from wildlife go into mitigating the costs imposed by wildlife.

### **Compensation for Wildlife Damage**

Village by-laws prioritize utilization of village revenue for use in compensating those who have suffered losses due to wildlife damage. It is significant to note that the revenue referred to is not just that accruing from wildlife enterprises, but it is whatever revenue the village may have generated. The by-laws state that village income and expenditure shall follow the normal procedures of the village government. Nevertheless, some expenditure is given priority over others. The prioritized expenditure is that required for compensating

people who have suffered damages from wildlife. Such losses include human death, crop damage, or livestock killed by wildlife (Lelangwa, n.d.).

It is instructive that communities can use revenue generated by even non-wildlife related enterprises to meet costs imposed by wildlife. Why should communities do this when they do not have any responsibility over wildlife damage? Perhaps this can be explained in terms of the moral economy of the peasantry, whereby village regulations are tailored to guarantee less fortunate members with opportunities for basic subsistence (Scott, 1976: 41-3, 184; but see also Popkin, 1979). However, the reason why deprivations caused by wildlife damages should be singled out for special attention is not clear. One reason might be that the revenue from wildlife related enterprises, no matter how minimal and elastic it may be, dwarfs the other sources contributing to the village coffers. In the villagers' financial imagination, wildlife-generated revenue may be the only revenue worth talking about in the village kitty.

In terms of devolving property rights in wildlife to communities then, this situation suggests that these groups would be willing to adopt a devolution project if it can contribute to the village kitty. Communities who are spending their revenue generated from non-wildlife to mitigate costs imposed by wildlife would be willing to appropriate opportunities geared towards making communities benefit from wildlife. This is because any legal access to the utilization of wildlife that would make communities better off would be preferable to a situation where communities do not have a regularized program for deriving benefits from wildlife. A variant to this preference would be a situation whereby the proposed program would be less attractive than the existing arrangements, even if the government does not officially sanction such arrangements. Acceptance or rejection of the WMA project in West Kilimanjaro villages may be understood against this background. Villages hitherto not

receiving any meaningful wildlife benefits were more responsive than villages already doing very well. The latter, exemplified by Sinya village, represents a case of absolute rejection of WMA project.

Having said that, we may pose a question as to whether the by-laws are a proper indicator of community enthusiasm for wildlife conservation and by extension, WMA. This question may arise because, one, the by-laws result from a requirement by the local government act for communities to enact them; and, two, other communities with such by-laws still rejected the WMA project. It can be argued, however, that although the by-laws are a requirement from the national government, which may thus diminish the potency of communities' claim to a pre-WMA consciousness, the kind of laws that ensue are contingent upon the local conditions. Otherwise, if the villagers did not mean what they enacted, one would wonder why they should seek to impose on themselves fines that suggest that enacting the by-laws was inspired by a ruthless desire to achieve certain environmental objectives. Villagers would likely be circumspect about penalties if they did not believe in the environment and natural resources that they sought to protect through legislation. The by-laws, for example, propose penalties for certain environmental crimes that are much higher than the income of most members of the village. Certain environmental crimes, for example, carry a penalty of about 50,000 shillings. This is the monthly salary of some cadres of salaried employees such as teachers in a village. Given that most villagers are not in salaried employment, they do not make as much money. Hence, they should have objected to such high fines, just as they rejected certain proposed fines for wife battering. It is most likely, therefore, that if communities had their way, the world suggested by the by-laws is the one they would sustain, hence their predisposition for WMA. However, why did communities elsewhere

with a similar background reject WMA? This was partly because of the nature of the anti-WMA coalition in vogue.

### **The Density of anti-WMA Coalition**

One of the regions that have presented a dogged objection to the introduction of WMA is Loliondo Division, in Ngorongoro District. In Loliondo, six villages were supposed to form the Loliondo WMA, but all of them have rejected the project. Loliondo shares certain characteristics with Enduimet Division. Maasai pastoralists are predominant inhabitants in both regions. Both border protected areas and have wildlife roaming about in their village lands. In both communities, their counterparts across the border in Kenya are fellow Maasai pastoralists. The Maasai communities in Tanzania hold the view that their Kenyan counterparts are, unlike them, benefiting from wildlife-based enterprises. On the eve of the introduction of WMA, both Loliondo and Enduimet communities had instituted village by-laws geared towards securing the wildlife sector, and individual villages had contracted with investors to establish wildlife enterprises. Some villages, however, were doing better than others in deriving benefits from wildlife. This disparity led to similar responses towards WMA in both areas. Villages doing very well in their wildlife enterprises such as Ololosokwan have been consistently alert in their suspicion towards WMA right from the beginning. This suspicion parallels the behavior of Sinya among the Enduimet villages. Sinya has also been doing very well in terms of wildlife enterprises, and has consistently opposed WMA in its current formulation. On the other hand, some villages in Loliondo, such as Oloipiri and Olirien, that are not well endowed in wildlife investments had allegedly

warmed up to the WMA initially, before they later on took a hard-line stand. The response of this group, therefore, mirrors that of the villages in Enduimet with similar characteristics.

While the Loliondo villages that may have initially warmed up to the WMA were, however, able to change course and oppose it, those in Enduimet signed up for the project. By the end of 2005, the proposed Loliondo WMA had not taken root, while that in Enduimet was being implemented. Loliondo's success in blocking the WMA can be explained in terms of an interaction of Loliondo's history and a strong anti-WMA coalition. In spite of their similarities, Loliondo and Enduimet differ in their history of interventions by external wildlife actors and action resources. Loliondo had an ugly experience of wildlife interventions that, coupled with a strong anti-WMA lobby, informed Loliondo villagers' rejection and sustained objection to WMA. The legacy of wildlife interventions in Loliondo can be characterized as one of dispossession.

Historically, communities in Loliondo used to occupy areas now designated as Serengeti National Park. A German wildlife NGO, Frankfurt Zoological Society (FZS), negotiated with communities for FZS to reserve some limited space to conserve wildlife, specifically the lion. Communities accepted, but in the final analysis, they were expelled from Serengeti to accommodate wildlife. In folk memory, communities remember the history of Serengeti National Park as one in which space sought for lion conservation turned out to be a national park for all wildlife, and from which communities were excluded. Communities hold FZS responsible for their expulsion from Serengeti National Park. Thus, communities now use this experience as a guide whenever contracting with environmental/wildlife enterprises. The case of the WMA was more telling because FZS, their nemesis responsible for their expulsion from Serengeti National Park, was designated by the wildlife division to be the

lead facilitating agency for the implementation of WMA in Loliondo. Hence, when certain issues in the WMA project seemed suspect, communities became more alarmed about wildlife-based interventions. They viewed the WMA project as a suspicious message carried by a suspicious messenger. Matters worsened when communities began questioning the project and proposing their own implementation strategies, only to have state operatives become hostile and resort to threats. The similarity of these events with their expulsion from Serengeti National Park could not have been more damaging to the WMA process.

This kind of suspicion was not very entrenched in the psyche of communities in West Kilimanjaro. Although they were aware that communities living next to wildlife areas are prone to losing their land to conservation interventions, Enduimet communities did not have such first hand experiences to make them nervous about a suspicious WMA project. This does not mean they were not cautious. In the past, they had had an altercation with a wildlife conservation project, Kilimanjaro Elephant Project, which indicates that they were also alert to the dynamics of dispossession. In 1990, Kilimanjaro Elephant Project initiated a process of protecting the only uncultivated piece of land as migratory corridor. Project officials intended to provide watering points for the villagers away from this area. Donors provided water pipes for this purpose, but villagers interpreted this to be a ploy to alienate land. Therefore, when the demarcating process commenced, "... local dissent arose, and after some ugly incidents it was necessary to postpone the work" (Grimshaw, 1996: iii). Oral sources claim that villagers rejected the pipes and the project sponsors had to retrieve them. Enduimet region was not, therefore, without its share of incidents. Moreover, they must have been aware of the expulsion of fellow Maasai from Mkomazi Game Reserve (see, for example, Brockington, 2002). Nevertheless, its experiences were not as memorable as those



of Loliondo because they had not been institutionalized through actual loss of land. In Enduimet, therefore, a new project could have a fighting chance.

Loliondo also had a different experience than Enduimet in terms of its interaction with investors in wildlife enterprises. Unlike Enduimet, Loliondo had both positive and negative interactions with these investors, the latter being the most relevant for our purposes here. Among the most publicized of these negative interventions was that of Ortello Business Company (OBC). A Brigadier from the Middle East had secured a lease for exclusive hunting rights in Loliondo. The company promised villagers in Loliondo that many development projects would ensue from its investments there. However, the situation turned out to be a national scandal. There were complaints of OBC not meeting its part of the bargain with the villagers. Villagers complained of being harassed by OBC agents whenever they got into the way of the company. The popular press soon baptized OBC's activities as Loliondogate. The grand finale was a parliamentary commission of inquiry to investigate how OBC got its lease and its activities. Nevertheless, this intervention did not terminate OBC's activities, as communities would have wished. OBC continued and was still mired in controversy with the villagers by the time of the introduction of WMA.<sup>80</sup>

The impact of OBC on Loliondo villagers was to instill in them some sensitivity when contracting for property rights. Thus, by the advent of WMA project, Loliondo villagers, unlike their counterpart in Enduimet, were conscious that there are two types of investors: OBC-type investors and others who keep to the bargain. The latter had served some of

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<sup>80</sup>The controversy stirred up by OBC was not actually confined to the villagers of Loliondo or Tanzania in general. It spilled over into Kenya where conservation NGOs complained that its activities in wildlife consumptive utilization were leading to game carnage in Loliondo and having an impact on Kenya's Maasai Mara Game Reserve that borders Loliondo (see, for example, East African, 2002 and 2003; JET.n.d.; MERC, 2002).

Loliondo's villages well (see, for example, Ololosokwan, 2003). The latter, too, is mostly what Enduimet villagers were familiar with. While not all of Enduimet's villages had wildlife investors, villages such as Sinya that had investors were doing very well. Villages without big investments yet who were aware of them in other villages longed for the day that they could also host such investors and gain revenue from wildlife. Certainly, all villages in Enduimet knew about Sinya's fortunes from wildlife enterprises. Similarly, in villages like Ol molog, there were some profits from the lean investment by Hoopoe Safaris. Other villages such as Lelangwa and Kitendeni received meagre income from a tour operator, Tanganyika Film and Safaris. However, the operator had stopped visiting their villages.

Thus, the image of wildlife enterprises in Enduimet was that of potential wonders yet to be realized and was, unlike in Loliondo, not tempered with vivid experiences of betrayal. Without personal knowledge that seemingly wonderful wildlife enterprises could turn out to be liabilities, Enduimet villagers were more prone to experimenting with opportunities. Their chances of doing so were increased by the absence of a strong anti-WMA lobby in Enduimet division. This situation was unlike the case in Loliondo, where a strong anti-WMA lobby, organized around locally based NGOs such as Community Resources Trust (CRT) and Laramatak Development Organization (LADO), spelt doom for WMA.

In Loliondo, the objective conditions for the rejection of WMA were catalysed into action by the activism of indigenous NGOs. Both LADO and CRT are powered by local inhabitants of Loliondo, some of who were not only members of their village's councils (and, therefore, government), but were also members of governing organizations at the district level. These organizations had established their credibility among villagers by organizing village seminars on land rights. They had also played a significant role in the demarcations of village

boundaries, a critical step in the village's acquisition of land titles. The organizations were also principal actors in the development of the village land-use plans and by-laws, including those on natural resources (see, for example, Ololosokwan, 2000; Oloipiri, 2000; Soit Sambu, 2000). Thus, by the advent of WMA, these organizations had effectively positioned themselves as opinion setters; they were to play a critical role in guiding their compatriots to reject WMA. Thus, a strong activist group confronting a discredited proponent of WMA (FZS) handed the WMA project easy defeat in Loliondo. West Kilimanjaro's experience was different.

In Enduimet, there was no organized grassroots pressure group spearheading opposition to WMA. Other villages could not emulate Sinya's case because it was seen as pursuing selfish interests. The opposing camp in Irkaswa could not crystallize into an anti-WMA front for the entire Enduimet division, mainly because those involved were discredited by their association with itinerant cultivators. They were not perceived as pursuing a cause that was for the welfare of society in the way NGOs in Loliondo were viewed. Moreover, in Enduimet, AWF had spearheaded the WMA project, and had no adverse legacy comparable to that of its counterpart in Loliondo. The NGO that came closest to checking AWF's activities in its uncritical implementation of WMA was SCF-TZ. SCF-TZ played a leading role in organizing seminars to sensitize communities of their rights under Tanzanian law in relation to land and natural resources. While these seminars disclosed to the communities the limitation of the WMA as constituted, it was not strategic for the organizers of these seminars to tell communities in explicit terms that they should reject WMA. In this respect, the organizers of these seminars were constrained, unlike AWF, which could tell communities to sign up for WMA without taking any risks because it was reciting the official script. For

NGOs like SCF-TZ to tell communities not to accept WMA, that could be interpreted as sabotaging a government program and it was not, therefore, practical for SCF-TZ to assume that approach. Thus, while in Loliondo, the anti-WMA vanguard could explicitly oppose WMA by virtue of their being direct and immediate stakeholders. In Enduimet the lone organization sensitizing communities against WMA was constrained because it was foreign, and, therefore, had to operate within acceptable official limits. Hence, while CRT and LADO could engage FZS in an altercation, SCF-TZ could not do this against AWF. Consequently, Enduimet's opposition to WMA was not as spirited as to effect a rejection in the style of Loliondo.

In Enduimet, therefore, factors favoring the acceptance of WMA were the opposite of those of Loliondo. There was no significant adverse legacy and neither was the proponent of the WMA project demonized. In addition to the failure to reject WMA being because of this weak background in objective conditions (for rejection), there was also the factor of an equally weak agency. The forces characterized as anti-WMA were not local, and hence this foreignness deprived them of the opportunity to mount the type of activism witnessed in Loliondo. Moreover, even if local activism had occurred, there would still have been a problem in that the objective conditions did not militate against WMA. To the contrary, they favored its adoption. The principal contradiction in Loliondo that was lacking in Enduimet was the legacy of adverse interventions by both wildlife conservation actors (NGOs) and investors.

## **V Conclusion**

This chapter addressed the question of the simultaneous verification and rejection of the argument that local communities would resist the WMA project. It emerged that certain communities accepted the project, while others resisted it. Others sought to be included rather than being excluded. The different communities' perceptions of what particular property rights regime was beneficial to them were at the center of these varied responses to the WMA project. Communities such as Sinya rejected WMA because it was inferior to what they had. Other communities accepted it because they thought that, in the absence of a better alternative, they could make good use of a bad situation. The WMA project, with all its limitations, appealed as a better alternative to the status quo, even though these communities realized that they were worth more than what the WMA project was giving them.

This view of the WMA was encouraged by the fact that the limitations of the WMA project were potential, rather than actual; the cost, if any, was not upfront. While communities could lose in the event of infractions on the WMA regulations, there was almost no cost to communities for accepting and implementing the idea of WMA. Thus, the notion that communities could say yes to WMA without losing anything initially was something that could attract "reckless" acceptance. Communities could imagine themselves operating in a situation of "let's try and withdraw if it does not work." This attitude was easy to espouse given that consenting communities conceptualized conditions for contracting with the WMA project as reversible at minimal cost. Approaching devolution in this way has implications to the quality of resource stewardship that would result when communities become the patrons of the natural resources at the local level.

It would be tempting to view such contractual circumstances as offering possibilities of resource predation by communities whose resource tenure rights are insecure. This is particularly so in light of Gibson's (1999) observation that communities in Zambia that were incorporated in a wildlife conservation program accepted the benefits that accompanied the partnership, but still continued to pilfer on resources. These communities merely changed their target of prey, but continued poaching nevertheless. Thus, the temptation to read potential for predation of resources in Enduimet communities is real. This potential towards predation, however, need not materialize with respect to the communities under study. The phenomenon of pre-WMA wildlife initiatives among these communities mitigates against the possibilities of an easy shift to predation. When communities pursue such initiatives and activate themselves to nurture natural resources on a hopeful basis that they will secure them for their own future use, such a pursuit is bound to solidify when access to natural resource is granted, even if this access is just minimal. Thus, a strategic, not mechanistic, conceptualization of their entitlement is likely to play against the possibilities of predatorship, contrary to what was hypothesized in chapter one.

While the case of the Enduiment response to WMA verifies observations by property right theorists, it also introduces scenarios that are contrary to what was expected. In this chapter, it has emerged that, although the state may not devolve wildlife property rights to communities in a way that generates a private property rights consciousness, communities may nevertheless accept a project that is seemingly incapable of advancing their interests. However, this eventuality need not necessarily lead to a predatorial resource regime as suggested in the property right theory that was advanced in chapter one.

## **CHAPTER IV**

### **CONTESTATIONS OVER WILDLIFE PROPERTY RIGHTS IN KENYA: The Economic Dimension**

#### **I Abstract**

This is a study of contestations over wildlife property rights between the state and local communities that host wildlife. Over the years, the state has laid claims over wildlife to the exclusion of local communities living with the wildlife. Communities, however, contend that they bear the brunt of hosting wildlife in their lands, and, consequently, deserve to benefit from wildlife as an economic resource. External actors have also argued for the devolution of wildlife property rights to local communities in a bid to arrest the deterioration of the wildlife biomass that is attributed to the communities' lack of interest in conservation. The state presents the impression that it can cede wildlife property rights to local communities. This study, however, argues that the state is unwilling to devolve wildlife property rights to local communities in a way that would engender in these communities a private property right consciousness as argued for by the proponents of community-based conservation. This argument is analyzed and situated within the various attempts by the state to placate the communities' clamor for a stake in wildlife as an economic resource.

#### **II Introduction**

Contestations over wildlife property rights in Kenya have grown proportionately with the establishment of formal state control over natural resources. Wildlife ownership moves from

an age of open access property rights regime in the precolonial era to one of highly contested ownership rights in the postcolonial period. During the precolonial phase, there were limited, if any, state structures that could exact control over wildlife. With the onset of colonialism, however, Africans began to experience constraints in appropriating wildlife. Hitherto freely accessible natural resources, including wildlife, were alienated from the public domain during the colonial period when the colonial state declared wildlife state property. Henceforth, it would be illegal for Africans to harvest wildlife or even kill problem animals. Africans opposed these colonial appropriations of wildlife, but the struggle was not very protracted because the colonial state was not well enough entrenched to be able to maintain surveillance that could often net the culprits. Thus, to a certain extent, while the legal infrastructure for excluding Africans from accessing wildlife benefits were put in place, the adverse impact was mitigated by a weak enforcement mechanism. Nevertheless, retribution was severe for the culprits who were apprehended, and this became the basis of African discontent with colonial wildlife property rights arrangement.

This discontent became more vicious during the post-independence period, particularly as the cost of wildlife damage became astronomical with minimal accompanying benefits. Population increase led to expanded demand on land. This in turn led to heightened contact with wildlife, and hence local communities experienced more damage by wildlife. This happened at a time when the state's capacity for surveillance was being staffed more and more with locals, thereby denying local communities the advantage of the monopoly of familiarity with the local dynamics. Thus, the problem of collective action within the African society was aggravated, with the consequence that the losses to the wildlife became even more pronounced because the hitherto appropriated wildlife benefits, even though



illegal, were now becoming scarce. This in turn heightened the clamor for the re-evaluation of community-wildlife relations, with communities advancing claims for compensation for damages imposed on them by wildlife, or for the government to concede that communities are also legitimate claimants to wildlife resources. The government and the conservation coalition responded by initiating devolution strategies geared towards giving communities some opportunities to extract benefits from wildlife. This was meant to include local communities as co-partners in the conservation project. These initiatives in devolving wildlife property rights failed to secure community allegiance to wildlife. These initiatives in devolution of wildlife property rights to local communities demonstrate that the state is determined to cling to the ownership of wildlife and can only devolve property rights to other claimants on its own terms. Communities tried to put up with this state patronized devolution but found the relationship objectionable. They, therefore, moved to secure legal recognition of their proprietary rights in wildlife (as discussed in the next chapter).

### **III Age of Open-Access Property Rights Regime: the Precolonial Era**

Communities' experience with wildlife during the precolonial period can be said to inform the contemporary state-local communities' divide over wildlife ownership. During the precolonial era, wildlife ownership has to be understood in terms of the nature of political leadership extant in each society. In centralized societies, the central authority owned wildlife, just as it owned land (and even the subject population), while in non-centralized societies, wildlife was an open-access resource.<sup>81</sup> In neither type of society did wildlife enjoy the status of a commodity. It was not until the rise of long-distance trade, towards the

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<sup>81</sup>Nevertheless, certain animals, as we shall see shortly, enjoyed protected status. These were those that had totemic significance to certain clans or communities.

second-half of the nineteenth century, that wildlife became a dominant commodity. Even then, it was only in centralized societies that state power was used to monopolize wildlife. In non-centralized societies, wildlife continued to be an open access resource until the rise of state builders whose career was, nevertheless, cut short by the intervention of formal colonial occupation. Thus, a number of African societies came under colonial rule without a clear experience of formal separation between society and wildlife ownership. For the Maasai of Kenya and Tanzania, for example, the experience that ownership of wildlife is a monopoly of the state was to be a legacy of European colonialism.

Prior to the European colonization of Africa in the late nineteenth century, wildlife was an integral part of the African society, without any formal separation between nature and society. Wildlife was viewed as a bounty of nature to be used in ways that suited the best interests of each society. Some societies are presented as having utilized wildlife consumptively, while others largely used it in non-consumptive ways. Whatever forms of utilization a particular group of people assumed, access to wildlife was a factor of the formal state structures in each society. In centralized societies where the chief or king was the depository of state authority, natural resources such as land and wildlife were under the control of such authority.

In Zambia, for instance, chiefs had control over land and by virtue of this power, they were able to influence other sectors such as wildlife (Shikabeta, Chief. 1993; Chiyaba, Honorable Chieftainess, 1993; Gibson, 1999: 128). In Zimbabwe, Lobengula's control of wildlife was exercised even over the early Europeans prior to the imposition of colonialism. Lobengula is said to have fined Europeans who shot game against his wishes (MacKenzie, 1987: 48). This would suggest that Lobengula's people then had a concept of wildlife as the

Chief's game. A similar inference can be made with respect to the Kabaka of Buganda. The Kabaka monopolized the nineteenth century ivory trade in Buganda (Mamdani, 1976: 30). Given the centralization of the Buganda Kingdom, and particularly the centralization of the Kabaka's power consequent to the transformation of military technology, it is not difficult to conceptualize how the King could bring ownership of natural resources under his sway.

Similarly, among the Toro, a centralized society headed by a king, the title of the king was "Omukama", meaning "owner of all" (Naughton-Treves, 1999:314). The King owned all the land and demarcated it for his subjects. But while there was a concept of individual ownership of land, individuals did not obstruct hunters from hunting on their grounds provided that the hunters shared game meat with the landowners.<sup>82</sup> The King also owned wildlife and even had royal hunting grounds. These hunting grounds were nevertheless open for hunting by ordinary hunters provided they did not hunt animals such as elephants and buffalo. Animals such as elephants were referred to as "King's animals", and ivory tusks had to be taken to the King (Naughton-Treves, 1999: 317-318). Thus, in spite of the social differentiation in the access to wildlife in centralized societies, such a differentiation did not amount to a deprivation of people's ownership of wildlife property rights. The situation was even more fluid in less centralized societies.

Precolonial societies in Kenya lacked centralization of authority as witnessed in other areas such as Zimbabwe and Uganda. Even in areas such as among the Digo and Duruma<sup>83</sup>

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<sup>82</sup>Harms (1987: 36, 87) related a similar situation with respect to the Nunu of equatorial Africa. Landowners had rights over land, but not the game in it; thus a landlord received a portion of an animal killed in his land (a landlord could not obstruct hunting and only waited for a catch and claimed property right over a portion of the kill).

<sup>83</sup>This is highly unlikely because the societies were largely lineage segmented formations run by a system of gerontocracy (cf. Spear, 1978).

where there were personages that the literature refers to as chiefs, they do not seem to have extended their authority to the control of wildlife as their property. Steinhart (2006: 32) observes that

All informants seemed agreed that there was no special portion of a kill set aside for chiefs or headmen, and ownership rights to portions belonged only to the men in the hunting party and their dependents.

The significance of this observation is that it shows the political leadership laid no claim to proprietary rights over wildlife.<sup>84</sup> It appears that ownership of wildlife was based on the right of capture, thereby suggesting that the property rights regime was an open-access one. This is the dominant image that emerges from Kenyan communities such as the Kamba who are generally known for consumptive utilization of wildlife. The major institution associated with hunting was the hunting society--which had more to do with rituals of increasing chances of bagging game than with controlling access to game. This institution assigned bagged game to the hunters based on those whose arrows were verified as having been the fatal shot. Other hunters in the party would not get any trophy (Steinhart, 2006). Wildlife property rights, therefore, were based on access other than on the logic of prior appropriation, at least, among those communities who pursued consumptive utilization.

There were other communities such as the Maasai that are said to have had little use for wildlife.<sup>85</sup> Some sources contend that the Maasai did not hunt wildlife for meat and that they despised those who did (Kipury, 1983). The popular opinion among both the Maasai and others is that Maasai did not eat game, save during crisis periods (Collett, 1987: 136,

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<sup>84</sup>This observation covers the precolonial era; during the colonial period, hunting was proscribed and even if people hunted, chiefs would arrest them. But if they connived, then he would stake proprietary rights on the game in lieu of arrest.

<sup>85</sup>The survival of wildlife among the Maasai has fueled popular opinion more than is the case in other areas of Kenya and Tanzania.

138). The view that the Maasai largely ignored wildlife living among them is, however, not correct. Indeed, contrary to popular opinion, the Maasai are said to have considered wildlife as their second cattle, and for several reasons. During drought, when their herds had been depleted by the vagaries of nature, they would resort to wildlife for sustenance (Western 1994: 20). On the other hand, Maasai social life was said to be interwoven with the wildlife environment, and they derived a measure of spirituality from the environment. Myths, legends and tales about land and the environment were narrated in a sanctified manner (Kipury, 1983). Certain wildlife species were associated with ceremonies and medicine, thereby imparting to them some cultural significance (Berger, 1993: 105; Kipury, 1983; Matampash, 1993: 35-36). This appropriation of wildlife for social significance took various forms: buffalo hide for making shields; rhinoceros horns used as containers for tobacco; giraffe tails made into fly whisks for elders; ostrich feathers served as head-gear for warriors; and hide and skin from famous animals such as the lion and colobus monkey were made into robes of honor for the elders.

Among the Herero of Namibia, wildlife was also highly valued not just for its consumptive value, but also because of its metaphysical significance; it was associated with rainfall. The Herero utilized wildlife sparingly and were against wanton destruction of wildlife because they believed that in so far as there was wildlife around, God would send rain to the world. This was because wildlife was God's creation and whenever God would look down to the earth and find them without subsistence, He would send rain (Bonner, 1993:23). In this sense, one can say that Herero had an instrumental view of wildlife, and in this regard, they would rate it as property that they could lay claim on to the extent that it was associated with the procurement of rain.

Thus, for most part in the precolonial era, claims to wildlife could be based on either immediate consumptive or non-consumptive uses. These were the days prior to the commoditization<sup>86</sup> of wildlife and, therefore, there was minimal tension in the appropriation of wildlife. In centralized societies where there was differentiation in access to wildlife, tensions were mitigated by the fact that such differentiations were premised on societal beliefs that supported hierarchy in society on more ways than just the access to wildlife. Thus, the chiefs could easily get away with privatization of access to some wildlife species or parts of wildlife. As Harms (1987) has observed, however, this is not to say that there were no struggles over resources in precolonial Africa. Struggles obtained, but these struggles were over access to resources, not the resource per se. In the case of fishing property rights among the Nunu of equatorial Africa, for example, Harms shows that while there were restrictions over access to fishing ponds and dams constructed by individuals, outsiders who only employed fishing by traps (as opposed to other common methods that would catch a lot of fish) were allowed in all waters, including private waters, without restriction (Harms, 1987: 25-26).

The crises over both access to the resource and the resource itself was to start fermenting with the rise of long distance trade in East Africa, a phenomenon that took place largely in the 19<sup>th</sup> Century. It was the long distance trade that began to elevate the value of wildlife, and especially elephants and rhinoceros into a commodity that could be privatized to the total exclusion of others in society.<sup>87</sup> While centralized societies were in the forefront in

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<sup>86</sup>On the commodification of wildlife, see the following footnote.

<sup>87</sup>Commodification of wildlife certainly dates to earlier than this period, but we lack reliable data on that period. It is not clear how the earliest trade in East Africa's wildlife products played itself out, though it is certain that the products were part of the articles of commerce between the coast and the

commoditizing wildlife for the purposes of participating in the long distance trade (Mamdani, 1976: 26-28, 30), soon actors in decentralized societies would begin to position themselves to make claims on the wildlife trade. In Tanzania, for example, there is the rise of new empire builders such as Tippu Tip of the Nyamwezi who sought to control the long distance trade in central Tanzania. It is said that Tippu Tip imposed property rights on wildlife for himself (specifically elephants) and that no hunting was allowed unless the hunter had his permission and agreed to giving him one tusk of every two (Kelly, 1978: 145). In Kenya, there is the rise of entrepreneurs like Kivoi among the Kamba whose exploits signal the possibility that they could easily have managed to carve out a commercial empire that could see them impose private property rights in wildlife where there was none previously.<sup>88</sup> As Steinhart (2006) has observed, a trading system involving the exchange of cattle, small stock, cloth, and other imported goods for ivory between the Kamba and their neighbors to the north and west remained an important and growing part of the overall supply throughout the precolonial period.<sup>89</sup> Thus the centrality of wildlife products, specifically ivory, had stamped

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outside world. East African ivory is said to have been found in Egyptian vessels fourteen centuries before Periplus (see, for example, Steinhart, 2006:18).

<sup>88</sup>We are able to hypothesize the scenario on the basis of Anderson and Hill (2004:24). They argue that decisions to invest in defining and enforcing property rights depend on the value and the cost of securing ownership —the latter depends on technology. In the East African region, this can be anticipated because long distance trade conferred additional value on wildlife, which hitherto had been used for subsistence or ceremonial purposes. But with the trade, wildlife products could be exchanged for goods imported from the East African coast. As long distance trade expanded into the interior, warfare technology was revolutionized. Gun and gunpowder, hitherto unknown in the region, were introduced. Thus, individuals and societies that were able to accumulate and monopolize the new weapons of violence had an advantage in imposing their view of the world on others. They could easily have imposed proprietary rights on wildlife.

<sup>89</sup>Of interest to the study of the Maasai and wildlife property rights is why they, as the immediate neighbors of the Kamba, and the ones controlling the areas that were the largest reservoir of wildlife, and hence ivory, did not declare proprietary rights over wildlife if by the mid-nineteenth century a new entrepreneurial elite and ivory trade were emerging among the Kamba. Moreover, the Maasai

its mark on the economic worldview of the precolonial African commercial actors prior to the formal imposition of colonialism.

Nevertheless, new wildlife property rights regimes did not materialize because at the time the coastal impetus to such materialization was taking place, colonization, a more dominant force, emerged to impose its own version of wildlife property rights over the region. Thus, the precolonial era closes with a mitigated open –access regime that had characterized it for most of the time prior to the advent of 19<sup>th</sup> Century European colonialism. This was a regime whereby wildlife was accessible to all (even in instances where forms of private property rights in wildlife could be said to have existed, such as centralized societies like the Toro and Nunu), but at the same time it was not abandoned to the vagaries of nature (as was shown in the case of decentralized societies where wildlife enjoyed some kind of cultural significance such that it would be expected that society would have stepped in to contain wildlife’s wanton destruction). Under this precolonial wildlife property rights regime, there may have been struggles for property rights over wildlife, but these struggles were not protracted.

Various reasons can account for the absence of a protracted war over wildlife property rights during the precolonial era. For one, wildlife was used mostly for its use-value rather than as a commodity for the exchange market. Any transactions involving wildlife were largely for a subsistence economy that was based on economic complementarity rather than competition.<sup>90</sup> Moreover, contestations over ownership of wildlife could have been moderated by the fact that there was abundance of game, at a time when human population

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capacity to do this should not be an issue because popular opinion then was that they were the pre-eminent military powerhouse (Thompson, 1885).

<sup>90</sup>See, for example, Mamdani, 1976: 26-30.



was low, or if population density manifested itself, its redistribution could easily occur given the availability of large unoccupied tracts of land. In whatever form it assumed, this demographic behavior can then be said to have translated into low demand for wildlife at a time when wildlife was in abundance. There was also the factor of the relatively limited reach of the precolonial state which meant that it had a compromised capacity for resource alienation. In some societies, the structures of governance were decentralized such that there was no monopoly of violence that could be brought to bear on the practice of alienating wildlife resources. In centralized societies that had a monopoly of violence, the control over wildlife resources did not amount to deprivation of the subject populations, partly because, as Harms (1987) has observed, there were structures in society that ensured that such controls over property rights did not amount to individualism. Moreover, the tendency during this era was for the chiefs or lords to provide sustenance to subject population as a way of attracting a following (see, for example, Harms, 1987). Thus a protracted war over wildlife property rights was to obtain only with the claiming of these rights by the European colonial authorities and the consequent separation of society from nature within the colonial dispensation.

#### **IV Resource Alienation and the Origins of the State-Communities Struggle over Wildlife: the Colonial Phase**

The colonial project was founded on the subjugation of the colonized and the subsequent appropriation of the natural resources (among them wildlife) of the conquered peoples by the colonial state. With specific reference to wildlife, the colonial state focused on wildlife's dual importance as a commodity and as an object of leisure (its aesthetic value). The appropriation of game animals was viewed as a critical ingredient to service the fiscal needs

of the colonial state. During the early days of European expansion, both the explorers, missionaries and early colonial adventurers in most of Africa viewed game as an open access resource that could be utilized in lieu of buying and ferrying foodstuffs from the coast to the interior (Mackenzie, 1987:44ff; Steinhart, 2006:55). Thus, wildlife was shot indiscriminately to feed the retinue of followers that constituted the bulk of the pioneer European column into the interior of Africa. Other members of this pioneer column were interested in shooting game for the trophies that they could take with them back to Europe (Mackenzie, 1987). From their initial encounter with wildlife, therefore, the Europeans, unlike the Maasai who were portrayed in popular opinion that we encountered above as ignoring wildlife, took note of the economic significance of wildlife and acted on it. Consequently, the colonial authorities, right from the days of the company rule (i.e. the Imperial British East African Company, IBEA Co. that initially had authority over the Protectorate), sought to exert their authority over wildlife as an economic resource.

The early colonial authorities viewed game as a source of revenue. As early as 1902, Sir Harry Johnstone was asserting the necessity of creating game reserves as sources of revenue (Collett, 1987: 140). Subsequent colonial authorities were to reiterate the same theme of wildlife as a source of revenue (see, for example, Cranworth, 1991: 396-370 quoted in Collett, 1987-141). The reason for this quick recognition of wildlife as a source of revenue is self evident. In the initial days of British rule, there were few, if any, ways of making the Protectorate fund itself. The future economic mainstay of the colony, agriculture, had not taken off because the settlers had barely grappled with the question of land alienation from the Africans and the provision of agricultural labor (see, for example, Okoth-Ogendo, 1992; van Zwanenberg, 1975).

So, the colonial authorities could certainly use their comparative advantage as the new wielders of “legitimate” force in Kenya to make capital out of wildlife. The economic exploitation of wildlife was as a readily viable option at this time because of a combination of two factors. First, there was freely available and abundant wildlife, and second, there was a substantial number of fortune and pleasure-seekers who had already flocked into the Protectorate in search of wildlife products. Using its military might, the colonial state imposed its control over wildlife property rights and went ahead to exploit wildlife economically. By the 1920s, revenue from wildlife products, particularly ivory transactions, contributed between 50-75% of the tax base of the Kenya Protectorate. Such ivory transactions included sale of confiscated and “found” ivory, hunting and special elephant licenses, gun permits and fines (Steinhart, 2006: 150-151). In regional terms, the impact of ivory revenue on the tax base was even more prominent. In the Coast province, for example, ivory and ivory-related fees far exceeded other sources of revenue. In 1922, ivory revenue from Tana District was three times that of the other customs returns combined; while in the then Kipini District, rewards to the Africans for delivering to the authorities ivory that they had collected was more than the tax revenue in 1923 (Maforo, 1979:157-158).<sup>91</sup>

Wildlife was also appropriated as part of a project of nature preservation. Within the overall framework of Victorian colonial expansion, there were those who pushed the need to protect wildlife as a heritage for posterity (see, for example, Cranworth, 1919: 396-370; Anderson and Grove, 1987: 1-12; Neumann, 1996). The appropriation of wildlife property

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<sup>91</sup>Maforo (1979: 157-158) makes a compelling observation indicating that what the Coast Province experience discloses about the significance of ivory in the colonial economy is important. The contribution of ivory at the Coast should be understood against the backdrop that the elephant population was not as dense as in the interior. (Of course, this need not necessarily imply that the interior did far better; one has to account for the ability of different colonial administrators to execute their mandate in administration and particularly in dealing with the local population. This would determine the willingness of the Africans to participate in the ivory business.)

rights for aesthetic reasons, however, did not exclude the economic motive for appropriating wildlife property rights referred to above. The Protected Areas system was allegedly used to check the decimation of game. The system defined those areas in which no hunting was to take place; and in those areas where it did, a pattern of closed and open hunting seasons was put in place (as is still the practice today in countries where sports-hunting is in vogue). This was a form of game management that ensured that wildlife was allowed to recover from the impact of hunting. The protected area system could at the same time be read as a clear indication that the colonial authorities planned on securing wildlife as an economic resource that was to be used for a long time both in consumptive (game hunting) and non-consumptive ways (photo-tourism). In due course, the wildlife Protected Area system would also generate revenue for the colonial and postcolonial establishments through photo-tourism. The colonial system thus had compelling grounds to alienate wildlife property rights from both the African population and European immigrants for its exclusive disposal. To accomplish this, it invoked several instruments such as conventions and ordinances.

Through a series of international agreements/conventions and legislative Game Ordinances, the colonial state brought the ownership of wildlife under its sway. This colonial appropriation of wildlife took the form of separating society from wildlife (the creation of National Parks and Reserves), in addition to specifically prohibiting anyone from appropriating game animals (save with authority from the state).<sup>92</sup> Among the early international Agreements legitimizing this colonial move were the 1900 and 1933 London

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<sup>92</sup>In the early days of the Protectorate rule (around 1894), however, the Imperial British East African Company that governed Kenya exempted Africans from the hunting restrictions that it issued against European hunters (Maforo, 1979:6). The aim of the restrictions was not to further the conservation agenda. It was to control the influx of armed Europeans into the interior where they would interact with the African population and possibly provoke the latter into a confrontation at a time when the IBEA Company did not have the muscle to handle unrest (Kelly, 1978; Maforo, 1979).

Conventions. The 1933 London Convention, for example, provided for the establishment of national parks in which human settlement would be generally prohibited. In article 4 (1), for example, it stated that there should be administrative arrangements for “The control of all white or native settlements in national parks with a view to ensuring that as little disturbance as possible is occasioned to the natural fauna and flora” (London Convention, 1933). While these kinds of arrangements did not have an immediate impact on the pastoral Maasai, they were to distort access to badly needed grazing and watering points for the Maasai living in the Amboseli basin once it became a park in later years (see, for example, Collett, 1987; Western, 1994).

The 1933 London Convention, moreover, re-stated and expanded restrictions on the types of hunting methods that were initially prohibited by the 1900 London Convention. Among them were those that generally covered hunting methods used by Africans. Article, 10 (2) stated, for example, that

Wherever possible, the under-mentioned methods of capturing or destroying animals shall be generally prohibited: ... (b) The use of....poison or poisoned weapons for hunting animals; (c) The use of nets, pits or enclosure, gins, traps or snares, or of set of guns and missiles containing explosives for hunting animals (London Convention, 1933).

The most likely recourse that now remained open was the use of certain types of guns. This was a dim opportunity because guns were out of reach for Africans (partly because as a commodity guns were still rare in Africa, and because of restrictions on possession of guns by Africans by the colonial state).<sup>93</sup> This effectively meant that by 1933, the erstwhile

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<sup>93</sup> Europeans had learnt the hard way not to reward Africans with hunting guns after such an experiment backfired in Central Africa when the Shona-Ndebele turned the guns against the white invaders in the 1896-7 uprisings (MacKenzie, 1987: 47).

exclusion of Africans from the wildlife hunting regimes had been given an international approval.

Starting from early 1900, and following the 1900 London Convention, the colonial government issued Ordinances that were meant to bring the wildlife largesse under its control. In this case then, force was being used as a tool for contracting for wildlife property rights between the colonial authorities and the rest of society, both the whites and African populations.<sup>94</sup> This was to be followed by a struggle for wildlife property rights between the colonial state versus these other segments of society. The struggle for these property rights, however, was not presented as a common front by society against the state because society was laced with the racial divide symptomatic of the political economy of the colonial state.<sup>95</sup>

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<sup>94</sup>This was not always the case throughout Africa. In certain places where there were centralized authorities, such as among the Toro, treaties were used in contracting wildlife property rights. The 1891 Treaty between King Kasagama of Toro and Captain Lugard of the Imperial British East African Company, for example, stated in clause 4 that: "I engage to preserve the elephants on my country and to prevent their destruction by hunters of any tribe whatsoever. I recognize the (British) Company's exclusive right to kill and hold all elephants in my country as Company property" (quoted in Naughton-Treves, 1999: 315). In subsequent Toro agreements (1900 and 1906), slight variations were made in which the King was to be given fifty per cent of ivory from Problem Animal Control (ibid).

<sup>95</sup>Kameri-Mbote contends that though the settlers and the Africans were confronted by the same problem they were not united in their opposition to the state's property rights, because the government gave superior consideration to the settlers' rights (Kameri-Mbote, 2002: 98). By contrast, I argue that the settlers would not have formed an alliance with the African population because, while they wanted the state to devolve property rights to them, the benefit of doing so would not have been enhanced if the rights were devolved simultaneously to them and the Africans. To include the African population in the ranks of those with rights to wildlife would have meant multiplication of competitors, a factor certainly not in the interests of the settlers. Thus, a strategy of struggling on their own served the settlers better, in the hope that the state would give in to the settlers' demands for devolution of wildlife property rights but deny the Africans. From this perspective, the failure of the settlers and the Africans to unite against the state strategy had nothing to do with the superior treatment settlers received. If they were treated as superior (whether superior to animals or Africans is not clear, given that the problem is one of giving game more attention than humans, p. 98), then the settlers and the Africans did not have a similar problem. This is actually Maforo's argument (Maforo, 1979). The settlers' choice of strategy was not based on their being treated better than the Africans. It was premised on the consideration of what property rights in wildlife should be in effect. Their answer to the question was in terms of a property rights regime

The settlers could not have struggled for a transformation of wildlife property rights that would have brought on board the Africans as equal participants in the appropriation of wildlife largesse. There would be no value added in settlers' vouching for a transformation of the property rights regime that would bring in competitors whose numerical preponderance was superior to their own. Consequently, they engaged the wildlife legislations with a view to fashioning them to accommodate settler interests.

Because the Ordinances defined the property rights regime in effect at the time, we review them briefly here and then examine their impact and how the society responded to them. Some of the Ordinances included the 1900 East African Game Regulations (published and allowed by the Secretary of State in February 22, 1901); subsequent Ordinances passed prior to 1950<sup>96</sup> largely dealt with the ground covered in the East African Game Regulations (1900). These Ordinances were passed in 1906, 1921, 1928, 1932 and 1937 (Kelly, 1978; Maforo, 1979; Ofcansky, 2002). These Ordinances first took control of game animals and later on both the game and their habitat (through the declaration of national parks).

The 1900 East African Game Regulations imposed the first effective control over wildlife by the colonial state. The regulations introduced a system of licensed hunting that forbade hunting, killing or capture of certain animals save with the authority of the state, issued through a license. These licenses were to be issued to sports hunters, public officers and settlers for a fee. Thus, while hunting, killing or capture of certain animals was proscribed, there were exemptions (made through licensing) that meant that some inhabitants

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that discriminated against the indigenous population. This was the reason why there was no convergence of interests and opposition against the state.

<sup>96</sup>After 1950, the colonial authorities began to lessen their monopoly of control over wildlife property rights. The first step was the enactment of the 1951 Wild Animals Protection Ordinance that started devolving certain rights to Africans.

could secure wildlife property rights while others would not. Moreover, the proscription applied only to some scheduled animals, while property rights in other animals were fair game for people (not Africans) interested in hunting. Article 10, for example, stated that, “Save as provided by these Regulations, any person may hunt, kill or capture any animal not mentioned in any of the schedules, or any fish” (Game Regulations, 1900).

It is then evident that right from the onset, the colonial state took possession of wildlife, and imposed its preferred property rights regime on the populations of the state. This imposition, while having its share of admirers, produced several casualties, as a result of which the wildlife sector was henceforth a terrain of struggle (this continues today, as will be shown in the next chapter). The colonial imposition of monopoly on wildlife property rights was welcomed by sports hunters (because they were interested in preventing game from being an open access resource with the possible threat of extinction; disappearance of the game would have ruined the opportunity to have it for their sport next time round).<sup>97</sup> It was also welcomed by animal welfare groups (who were opposed to the wanton suffering visited on game in what can be called the age of mass game slaughter in Kenya). The two groups then, in their response to the colonial wildlife laws would pursue the same cause, though with contradictory motives. On the other hand, other actors in the wildlife sector, such as settlers, traders in wildlife products and Africans, felt aggrieved.

The settlers did welcome the game laws but with the proviso that they were not constrained from protecting their property from wildlife damage. Settlers were concerned

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<sup>97</sup>In Central Africa, hunters even opposed the establishment of white settlements, which they blamed for the extermination of game. One observer is said to have urged “...in 1891 that the BSAC territories should be preserved as a happy hunting ground for commercial killer and gentleman sportsman and not as a field for settlement” (MacKenzie, 1987: 56 ref. to Lord Randolph Churchill). Others blamed hunting parties for the decline in game numbers. Thus, the struggle for wildlife property rights was multi-faceted, and not just a state versus society affair.



that the state enacted laws prohibiting killing of wildlife even when it was a vermin. Although settlers were allowed to shoot marauding wildlife that was wreaking havoc on property, certain Royal Game was protected and the settlers could not just shoot it (Legislative Council debates as cited by Maforo, 1979: 138, 143). Consequently, in the Legislative Council, advocates of settler interests contended that when it came to the preservation of game and settlement, the latter should prevail. By 1926, an advocate of white settler interests in the Legislative Council argued that game preservation was costly to the settlers and existed at the expense of the settlers. Arguing that game was a luxury, he further contended that if it came to the choice between game and settlement, he would vote for settlement (Maforo, 1979: 136-137).

The settlers may have considered game a luxury because they obtained no benefit from it. The failure to extract benefits from wildlife occurred because wildlife property rights were monopolized by the state. The state, for example, while allowing settlers to kill animals to protect property also legislated that settlers surrender trophies from such animals to the state (1906 Ordinance, quoted in Maforo, 1979: 104-05). Thus the settlers were being denied access even to dead game that had visited damage to their property at a time when the government had no compensation regime for such wildlife damage to private property. Indeed, by 1937, the government required the settlers to report to the District Commissioner cases of wildlife shot as vermin; and such wildlife remained the property of the government. This step was taken in an attempt to seal loopholes that settlers were thought likely to exploit in order to access game illegally. The government expressed apprehension that shooting parties could be organized that would disguise themselves as an effort to protect against damage from animals (Maforo, 197:151).

Thus, although the settlers could appear to have been a more privileged class in the colonial state than their African counterparts (as Kameri-Mbote, 2002 suggests), they were constantly on a collision course with the state over wildlife property rights. While the settlers did not necessarily contest the legitimacy of the state's claim to wildlife ownership, the central question was, who was to pay for the preservation of wildlife (within the context of its destructive activity). This question would not have been necessary if the settlers had property rights over wildlife in their lands, thereby relieving wildlife of the epithet of a nuisance in the estimation of the settlers. The failure to resolve this question can be hypothesized in terms of the state not seeing the need to contract for a different regime of wildlife property rights. To the state, such contracting would mean sharing with the settlers the badly-needed revenue from wildlife, a free bounty of nature, thereby dissipating rent at a time when the settlers did not pose a credible threat to either the existence of the wildlife as a resource or the life of the state.<sup>98</sup> The state also seems to have considered the settlers as not credible because even after the state gave settlers some concessions, it would ring them with safeguards for fear that settlers were prone to defection. This may partly explain why settlers were supposed, for example, to report game they shot as vermin to the District Commissioner. Hence, the state's strategy was to impose its preferred property rights regime and then negotiate with the settlers within that context. Consequently, in subsequent Game Ordinances (1906-45), settlers did battle with the state over issues such as the number of problem animals they could kill, their variety, and the circumstances of shooting such animals.

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<sup>98</sup>In any case, there were equally pressing issues related to land acquisition from the Africans and provision of African labor that the settlers relied on the state to deliver. Settlers, occupying hostile territory, possibly needed the state as much as it needed them to develop agriculture as the mainstay of the economy. Thus the state may have known that the settlers could be a nuisance, but that they could not go beyond that.

Nevertheless, the opportunity that the settlers had to wring concessions from the state was not available for the other aggrieved actors such as the traders and the Africans, the latter for a while. Traders, who were simply interested in game products--a taste they developed before both the IBEA Company and, later, the colonial state consolidated sway over the territory--felt alienated from harvesting wildlife that they had come to consider as an open access resource. The pioneer column of European ivory harvesters, plus their Arab and African counterparts, took any game they wanted (Steinhart, 2006). The alienation of these resources by the colonial state led these erstwhile users or their successors to turn to poaching (Steinhart, 2006; Maforo, 1979), a clear indication that they resented state control of wildlife property rights that would now require them to pay license fees before accessing game. This group could be expected to have either fizzled out or adapted to the new wildlife property rights regime imposed by the state, because there was no way the state was going to negotiate a continuation of the dispensation that obtained on the eve of colonial rule, and to some extent into the colonial era before the colonial state developed its grip on the colony.

The Africans were in a more precarious situation than either the traders (of whom they were a part) or the white settlers. In the first instance, Africans were even excluded from the 1900 East African Game Regulations exemption that allowed “any person” to hunt wildlife not mentioned in the schedules to those regulations. Africans could only be allowed to hunt, kill or capture wildlife through a different exemption procedure but which did not make reference to the right to hunt, kill or capture other animals not included in the schedules of the 1900 East African Game Regulations. Thus, while the prohibitions placed on non-Africans were conditional, for the Africans, the hunting prohibition was total unless they were given special exemption from the Chief Native Commissioner.

Africans could only access wildlife if they were seen to “...appear to be dependent on the flesh of wild animals for their subsistence...” (Game Regulations, 1900, article 26). In that case, such people could be authorized by the Chief Native Commissioner to access certain game and under certain conditions that the Commissioner may set. Similarly, under article 27, Africans could get a sports hunter’s or settler’s license upon such terms and conditions as the Chief Native Commission may prescribe. Thus, it is clear that without these two exemptions, Africans were cut off from wildlife largesse, unlike other inhabitants of the colonial state.

Of course a case can be made that for Africans, the proscription against hunting of wildlife was only nominal because the state’s capacity for enforcement of game laws in African areas was minimal. To this extent, Africans could continue harvesting wildlife with just a little imagination and effort to evade whatever traces of authority could be there.<sup>99</sup> The scenario, however, was more complicated than the question of the state’s capacity to enforce game laws. As MacKenzie has observed,

Game regulations were largely irrelevant to Africans: their access to game was denied through the operation of gun laws, together with the fact that game became extremely scarce in areas of dense human settlement like the reserves (MacKenzie, 1987:57).

The scarcity of game would imply that Africans would have to move far and wide from their place of abode in search of game, and this could then increase their odds of having a brush with the law. It is possibly in this context that Sir Frederick Jackson found the Kamba suffering from the famine of 1899 and yet they were not hunting; he wondered why the colonial administration had not endeavored to alleviate the famine by permitting hunting

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<sup>99</sup>This is so given that there are problems of collective action and those breaking the law could be reported to the authorities.

(MacKenzie, 1987: 57-8). As Steinhart (2006) has shown, by the time of the imposition of colonial rule, the Kamba were already hunting far from their areas. But if they were to continue hunting in such outlying areas, they would have been vulnerable to apprehension even when the legal enforcement mechanisms were not sophisticated. Thus, the scarcity of game conspired with the game laws and undermined the economic right (Barzel, 1997) to game that would have been otherwise helpful for the Kamba even after they had been denied the legal right to hunt game.<sup>100</sup>

An even more ominous denial of wildlife property rights was visited on the African population with the establishment of game reserves under Article 11 of the Game Regulations. Once such reserves were established, presence in them was largely criminalized. The Article states

Save as provided in these Regulations or by any such Proclamations, any person who, unless he is authorized by a special license, hunts, kills, or captures any animal whatever in a game reserve, or is found within a game reserve under circumstances showing that he was unlawfully in pursuit of any animal, shall be guilty of a breach of these regulations (East African Game Regulations, 1900).

This was tricky for Africans living next to areas declared game reserves because the demarcations of such areas was not marked on the ground, and therefore they could not know when they were beyond the boundary of the reserve. And, of course, the decision of whether they were inside the game reserve in pursuit of game was discretionary to the racially-tinged authorities.

In certain respects, the colonial administration provided opportunities for Africans to access wildlife property rights, even if only by default. Perhaps knowing that there was a lot

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<sup>100</sup>Though Steinhart (2006: 55) avers that in the colonial period the Kamba continued to hunt, disguising their poaching as defense of life or property, this contention is problematic. There is a view, which Steinhart (2006: 164-65) shares, that Africans were denied the right (enjoyed by the European settlers) of shooting destructive wildlife, but were allowed to chase animals using sticks, fire and stones and relay information to the Game Department. The colonial authorities would then shoot game.

of ivory lying around with Africans (which they may have gotten in various ways, including from elephants dying of natural causes), and also because they knew they were ineffectual in enforcing their game laws, the colonial authorities sought to play some cooperation game with the Africans with respect to the ivory trade. This entailed paying rewards to Africans who delivered found ivory, provided it was thought not to have been poached and then presented as found ivory. Rewards were also to be paid for informants if their tips led to the recovery of poached ivory.<sup>101</sup> Though there were opposing voices, this program was implemented and as we observed above, in certain areas like the Coast province, Africans were paid money that even exceeded the tax revenue. This program was one way in which colonial authorities saw a net gain in contracting for a wildlife property rights regime that would also benefit Africans. The state sold ivory delivered by Africans at thrice the rate they paid for the reward (Kelly, 1978; Maforo, 1979). Thus, they were not contracting with the Africans either for the benefit of conservation or the Africans.<sup>102</sup> Such contracting was to take shape in the post-Second World War period.

After the Second World War, colonial wildlife policies began to reflect some concern for African interests in wildlife property rights. At the legislative level, two Ordinances that recognized Africans' stake in wildlife largesse were passed. These were the Wild Animals Protection Ordinance 1951, and National Parks Ordinance, 1945. The latter provided for

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<sup>101</sup>There was a lot of controversy over the plan, with some critics saying it would encourage Africans to poach ivory and then claim they found it in the bush, or had it prior to the ban on possession of trophies. This opposition was in spite of buying regulations that stipulated that if ivory was raw, and therefore possibly poached, it would be confiscated and those presenting it penalized (see, for example, Maforo, 1979: 103, 152-53).

<sup>102</sup>Colonial authorities had consistently stonewalled against entreaties to compensate Africans for the heavy toll they suffered from wildlife. Even when colonial officers in African reserves relayed information on the extent of wildlife damage to African property, such petitions were ignored (Maforo, 1979:177). Thus, there were pro-African voices in the struggle for wildlife property rights even among colonial administrators.

consultation with Africans, through the Native Lands Trust Board, whenever their lands were to be alienated for wildlife purposes (Maforo, 1979:193). However, this did not indicate whether Africans had veto powers or if the consultation was just a legitimating one, where the declaration of a national park would nevertheless go ahead, their protestations notwithstanding. Pursuant to this Ordinance, the Royal National Parks of Kenya, led by trustees, was set up to be in charge of National Parks. In 1952, the Southern Game Reserve was replaced by three National Reserves (among them Amboseli) and Maasai Mara. These reserves were placed under the administration of trustees (Lindsay, 1987:154). The declaration of these areas as National Reserves did not transform the wildlife property rights relations in any fundamental way. Although hunting was prohibited in the reserves, this was of no consequence to Africans because they were not allowed to hunt, anyway. In Amboseli, a fundamental problem would have obtained if they had been forbidden from herding their livestock in the reserve, but this did not happen even though naturalists continued to raise eyebrows about the presence of Maasai cattle in the reserve (Lindsay, 1987:154).

The fundamental transformation in wildlife property rights relations was to come with the Wild Animals Protection Ordinance, 1951. This allowed District Councils to levy fees on hunting enterprises and use the same for local needs. In the first wave of linkage between benefits from wildlife and conservation, it was claimed during Legislative Council debates that if Africans benefited from game proceeds, they would appreciate wildlife preservation (Maforo, 1979:203).<sup>103</sup> In a further push of this policy, an amendment to the 1951 Ordinance was effected in 1957 which brought game fees in African District land units at par with government charges. Moreover, controlled areas were created in African land units in which

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<sup>103</sup>The white constituency was, however, not receptive to the idea of sharing wildlife revenue with Africans. The official proponents claimed that the proceeds were to help put up infrastructure that would boost tourism, travel, and sport (Maforo, 1979: 203).

African District Councils had powers to pass by-laws (Maforo, 1979:219-220). While these steps could be seen as the first real shift towards having Africans access wildlife property rights, it is still difficult to take them as conclusive evidence that the colonial authorities were prepared to devolve property rights in wildlife to local communities. The colonial authorities, even at the tail end of colonial rule still seemed determined to retain state control over wildlife largesse, the concessions to communities notwithstanding.

The report of a Game Policy Committee, issued in 1957/58 and adopted as a government Game Policy in 1959/60, attests to this observation. While the report conceded that the future of game in Kenya depended on the attitude of the people of Kenya (Colony, 1959 sec. (5)(1)), and hence, one would expect that the state would use this as an impetus to devolution, it was still not able to countenance devolving property rights to them. To the contrary, a regime of strong central control still pervades the position taken in the policy. The government insisted that

The determination of policy in regard to proper land usage, in which game preservation is a factor, is a matter of national importance. Ultimate responsibility both for formulating policy and for ensuring that the policy is effectively carried out must therefore rest with the Government (Colony, 1959 (2)).

Although this in itself does not preclude the government from making policies that devolve wildlife property rights to communities, it at least emerges that that is not what they intended to do.

In elaborating its view as to what constitutes the bedrock of game preservation, contrary to the proponents of community-based conservation that this bedrock is to be found



among communities, the state was of the view that game preservation was a fortress exercise.<sup>104</sup> The policy emphasized that

In the last resort the complete preservation of game can only be assured fully in national parks. The Government must look to the Trustees of the Royal National Parks to provide the main bastion in its long-term game preservation policy. The Government will maintain existing parks. The Government will consider what control measures will be possible in areas adjoining National Parks (Colony, 1959 (3)(2)).<sup>105</sup>

Moreover, the government rejected the Game Policy committee's proposal to set up local game reserve committees with statutory recognition in respect of every game reserve. Rather, it held that should such a committee be desirable, the "Government would consider each case on its merits" (Colony, 1959, part I, 2 ii). Thus in spite of the concessions it had made in revenue sharing and provisions for consultation in alienating land for preservation of game, colonial authorities were sending an equally strong signal that game control was the preserve of the state.

Nevertheless, the government was soon to undermine this position in a step that marked a further transformation of wildlife property rights. In 1961, both Amboseli and Maasai Mara national reserves were converted into game reserves and placed, respectively, under the Kajiado and Narok District African Councils. This conversion took place against a background of lobbying by hunters, naturalists and Royal National Park trustees who wanted the national reserves (especially Amboseli) declared national parks. Their desire had been to eject the Maasai from Amboseli basin because they feared that Maasai cattle were displacing

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<sup>104</sup>Brockington (2002) has used the phrase "Fortress conservation" in respect to the eviction of the Maasai from Mkomazi Game Reserve to preserve it as a pristine habitat for wildlife even though the Maasai had lived with the wildlife for a long time.

<sup>105</sup>This alleged commitment to trustees would shortly be subverted, as is shown below, when the government transferred Amboseli to Kajiado African District Council without consulting the trustees (Lindsay, 1987: 155; Ofcansky, 2002).

wildlife; yet the proponents of the parks system wished to see Amboseli preserved as a pristine area (Lindsay, 1987:154). However, this pressure for a park status was being contained by the Game Department that wished to have these areas remain as game reserves, and hence, under their sway.<sup>106</sup> At the same time, the African District Councils were bargaining with the colonial authority for a stake in the reserves if they were to retain them as wildlife preservation areas in the post-independence era. The colonial authorities bought into the promise by the African District Councils that Africans would preserve the reserves if they were benefiting from them. Thus, in 1961 both Amboseli and Maasai Mara were moved to Kajiado and Narok African District Councils, respectively, to be district game reserves.

This can be called the first major step in devolution of wildlife property rights to local (and especially African) communities. Maasai Mara was to enjoy this status to the present day, while Amboseli was to experience a reversal from district game reserves to National Parks status in 1974.<sup>107</sup> The 1961 devolution to district game reserves status meant that wildlife would receive some protection, but communities would benefit from wildlife. The transformation of wildlife property rights that went with this devolution largely favored the Maasai as a community. In Amboseli, the Kajiado African District Council was to collect revenue from Amboseli. In return, the Council negotiated with the Maasai in Amboseli for a livestock free zone that was to be used only by wildlife (Talbot and Olindo, 1990). On its

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<sup>106</sup>While national parks trustees were in charge of animals in the parks, the Game Department was in charge of those outside; thus carving out a park in an area meant reducing the bureaucratic necessity for the Game Department, something they seemed to wish to avoid.

<sup>107</sup>The status was again reversed to a reserve in 2005. But a coalition of conservationists has moved to court to challenge the decision. The reversal has thus not been effected.

part, the Council was to provide the Maasai with social services in lieu of utilization of the exclusive wildlife zone.

In Maasai Mara, the colonial authorities contracted with the Maasai for a wildlife property rights regime that provided for land alienation from everyday Maasai use; a certain area in the Mara reserve was to be free of human activity (save tourist facilities). This was a cost to the Maasai. On the other hand, however, there were benefits. The reserve was to be administered wholly by Narok African District council. The Council would collect rents and develop infrastructure in the reserve. Part of the fees was to be used for social services for communities adjacent to reserve, with signs indicating that the funds were generated from the reserves.<sup>108</sup> Moreover, the council was to run hunting blocks outside the Mara reserve and collect fees from the same. The tourist hunting fees were supposed to go to villagers on whose land hunting blocks were located. The government was also to collect game license fees from the hunting enterprises (Talbot and Olindo, 1990: 69).

Thus, by the time of independence the ownership of both Amboseli and Maasai Mara wildlife reserves had been transferred from the colonial government to local communities. What then had been the legacy of wildlife property rights in Maasailand during the colonial period? As mentioned earlier, colonial declaration of a Queen's dominion in Kenya implied loss of, *inter alia*, wildlife property rights by Africans, and to a lesser extent, the whites, both settlers and others. In Maasailand, this loss was experienced by the Maasai in terms of loss of legal access to game, given the restrictions on licensing, hunting methods and trade in

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<sup>108</sup>The need to link provision of social services with wildlife is certainly an attempt to buy space for wildlife in people's imagination. This is the logic of community-based conservation today. What is not yet clear is the extent to which the proponents of the devolution project sought to negotiate the divide between public and private goods as they tried to lure the Maasai into conservation. It would appear it was assumed that the communal spirit of the Maasai would suffice: if the community benefits, it will vote with wildlife.

wildlife productions imposed by the state. There was also loss of compensation for diseases and predations on livestock and people caused by wildlife.

While in the precolonial period no one actually paid compensation as such, the fact that Maasai made use of wildlife in whatever ways they may have wished could itself be conceptualized as a proxy to compensation, just as the evening out, through hunting and killing wildlife in retaliation for predation, could be seen as a form of compensation. The fact that all of these practices were now proscribed meant that there should have been instituted a form of compensation for victims of wildlife damage. Under colonial control of wildlife, neither the precolonial type of compensation, nor a new compensation regime was in place. This absence implied that wildlife property rights were tilted against the Maasai. The oppressive character of this wildlife property rights relations situation becomes more pronounced when one considers, for example, that colonial authorities provided for ways to insulate wildlife against sick cattle, and not vice versa. The London Convention, in its efforts to preserve the wildlife of Africa, called for “Applications of measures, such as the supervision of sick cattle...for preventing the transmission of contagious diseases from domestic animals to wild animals” (London Convention, 1900: article II, 12). No provisions about cattle’s vulnerability to such diseases as malignant catarrh are provided for in the Convention.

Apart from loss of legal access to game and compensation, the land question has also been identified as another way in which the Africans lost out in the process of colonial imposition of wildlife property rights. Land was alienated for wildlife and, in the case of land declared national park, it was out of bounds for unauthorized persons and human

activity, including hunting,<sup>109</sup> grazing, foraging or farming. Grazing was particularly critical for communities living in areas where the dry season grazing and watering spaces were proclaimed wildlife protected areas. As Kimeri-Mbote has observed,

The confinement of these resources within parks where they were not available for use represented a social cost to the communities, which cost was not paid for. Parks were promoted as single land-use areas and people denied access to the resources contained therein (Kimeri-Mbote, 2002: 97-98; and see also p.91).

While this observation may explain the situation in other places, it fails to capture the nature of wildlife property rights struggles in Maasailand. During the colonial era, wildlife protected areas in Maasailand were not promoted as a single land-use regime. The Maasai did not have any contest with colonial authorities over access to areas designated wildlife reserves, even though the first wildlife reserves were declared in their areas (contrary to the impression given in Kimeri-Mbote, 2002: 91). The Maasai retained access to grazing and watering places in the reserves until after the colonial authorities handed over the reserves to the respective African District Councils. Indeed, the question of property rights over wildlife reserves was a contest between the colonial government, nature preservationists and hunters who wanted the Maasai kept out of Amboseli reserve, but the government never acceded to these pressures. In Maasai Mara, the issue of keeping Maasai out of the reserve did not flare up because they themselves kept off the core of the reserve; it was tsetse-fly infested up to late 1950s, when they began to invade these areas through burning (Talbot and Olindo, 1990). Thus, Maasai contestation with the colonial state over land was in spite of the declaration of wildlife protected areas, unlike in other areas, such as Serengeti, where

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<sup>109</sup>I do not consider this to be of much relevance to Africans because prohibition on hunting was more generic and not restricted to the protected areas. The latter could affect whites who were allowed to hunt in open areas, but Africans were under a permanent ban, game reserves or no game reserves.

national parks were established and the Maasai evicted from them (Maasai Agreement, 1958).

From the foregoing, it can then be submitted that colonial authorities had a clear view of what they wanted from wildlife. This is contrary to Kimeri-Mbote's (2002: 89) contention that objectives of game conservation in colonial period were haphazard and not well thought out. This state of affairs she attributes to the dominance of interests in agriculture that blinded the colonial authorities from seeing the importance of wildlife--which was, therefore, perceived as a menace or vermin and thus shot indiscriminately. To the contrary, wildlife property rights were a signal pillar of the colonial scheme of things. It would appear that Kimeri-Mbote (2002: 89) and Maforo (1979) conflate the colonial state with settlers and see the game question as that of colonists versus Africans, thereby blurring the distinction otherwise discernible even in their works between the colonial state and the rest of society, including the white settlers.

The issue at stake is that of contestation over devolution of wildlife property rights to the rest of society, whether white or black. Both of these are contesting with the state, albeit for a different status of property rights: The colonial state had an elaborate clarity on wildlife as state property and consequently appropriated the same to itself. Beginning with the advent of the colonial state (see, for example, Lord Cranworth 1919), through the twilight of colonialism (Colony, 1959), colonial state actors were clear on the centrality of wildlife to the economy of the colony. In 1951, Cooke argued that,

Game is a great asset to this country and it is an asset which we are fortunately able to cash in on, if I may use the expression. In a country where there are very few minerals or other assets, it is, as the Honorable Mover indicated, a revenue-earning department and, indeed it is also, fortunately, a dollar earning one (Leg co debate, 1951, quoted by Maforo, 1979: 213)

Similarly, in the Game Policy of 1959, the government conceded that

game is the most important tourist attraction in the country and that the tourist industry is of considerable economic importance. Proper land usage, ...must take into consideration the asset of wild life, as forming a part of the natural wealth of the country, so as to preserve the conditions under which the tourist industry can expand (Colony, 1959: 1 (i)).

These observations, considered in line with the returns from ivory referred to earlier, show that the colonial state could not have been party to the indiscriminate shooting of wildlife as vermin.

Indeed, the settlers' right to shoot destructive wildlife was won incrementally and only through a bitter struggle with the state (Kelly, 1978; Maforo, 1979). The indiscriminate shooting was done outside state connivance (and even when done by state officials, it was a case of a principal-agent problem). This shooting does not even represent an evaluation of game as less sturdy than agriculture in the economic estimation of the settlers; rather, the settlers could be seen as using the vermin card as a camouflage for accessing wildlife goods which they considered as public goods anyway, and hence a welcome supplement to the yet to flourish agricultural sector. From the days of adventure hunters, it was clear that there were enough side payments that could be secured from selling trophies to subsidize an individual's trip to Africa or whatever other enterprise one was engaged in within the continent (Steinhart, 2006; MacKenzie, 1987). Colonial records are also replete with reports of settlers indulging in poaching. In Legislative council debates, a Member for Agriculture, while addressing a question on poaching, stated:

We have had quite a number of cases, and I may say this has not specifically referred to the Africans--on the contrary, it is more common to other races—in which it is alleged that the defense of property has necessitated the slaughtering of certain animals.... (Leg co, debate, 1951, reel 16 p. 326 quoted in Maforo, 1979: 207).

This association of whites with indiscriminate shooting of game can also be understood in the light of the previous Ordinances that required settlers to report the game they shot as vermin to the District Commissioner and to have the trophies as state property. The objective of this requirement was to curb hunting parties disguised as vermin control.

There is also a tendency to see the wildlife question as one of race relations, rather than as property relations being contested between the state and society (Kameri-Mbote (2002; Maforo, 1979). Kameri-Mbote (2002: 91), for example, argues that within the general schema of colonial expropriation of African lands and resources for preservation of game, “the rights of the settler farmers to their land and other resources found in them were rigorously protected.” This is misreading the wildlife property rights relations that existed between the state and the settlers. While the settlers had the legal right to deal with problem animals, such right did not give them control over wildlife resources in their lands. Wildlife within settler farms was state property and was subject to prevailing Game Ordinances, among them those that stipulated that game shot during problem animal control remained the property of the state. In certain cases, settlers were not even allowed to shoot certain game, considered royal game, even under the concession of problem animal control. Consequently, there were running battles between the settlers and the state over whether some of these animals, especially those which were quite destructive, deserved to be protected. Thus in matters of wildlife property rights, the white settlers did not own wildlife in their lands any more than the Africans did. The white settlers, just like the Africans, often found themselves reduced to poaching in order to fulfill their desire for game, even though they had more opportunities for access to wildlife than the Africans.



The colonial transformation of wildlife property rights can be summed up thus: at the time of the imposition of the colonial state in Africa, decentralized societies like those mostly found in Kenya enjoyed a fluid wildlife property rights regime. The property rights relations between the nascent colonial state, the Africans and the whites could rightly be characterized as that of the right of capture; wildlife was largely an open-access resource. The initial claim to the ownership of wildlife by the bulging colonial state remained just that—a claim. Nevertheless, as the colonial state brought the inhabitants under its effective sway, it was able to impose through force a transformation of property rights in, among other domains, wildlife. This imposition by force was in contradistinction to what obtained elsewhere, as in centralized societies where negotiating treaties with the rulers of the various polities could be employed as an alternative to force. The former was the case in Toro, while the latter obtained among, for example, the Shona and the Ndebele (Naughton-Treves, 1999; MacKenzie, 1987). Thus, superior weaponry, not market relations, transformed wildlife property rights relations in Kenya.<sup>110</sup>

The ensuing struggle for wildlife property rights entailed a contest between two state institutions: the Game Department and the Royal National Parks, and between the state and society (both various segments of white community and Africans). Within the latter struggle, the dominant theme was that the state was unwilling to devolve wildlife property rights in toto to locals (both white and Africans) living with the wildlife. Thus the scenario that unfolded shows the take-over of wildlife by the colonial state by force. Some rights were then allowed for both the settlers and the hunting-gathering societies. Devolution was effected incrementally as a bundle of rights to society, amidst contested claims by the various

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<sup>110</sup>See, for example, Anderson and Hill (2004) on the role of weaponry in the transformation of property rights in the American West.

wildlife institutions of the state, settlers and Africans. After 1945, decisive steps were taken to give Africans a greater stake in wildlife, in spite of opposition from other actors in the wildlife sector--such as the preservationists and the hunters. These steps culminated in the transfer of both Amboseli and Maasai Mara to the local African District Councils in 1961.

Thus, with respect to Maasailand, the colonial state bequeathed to the postcolonial state and the Maasai a wildlife property rights regime that the Maasai could generally be comfortable with. The struggle for wildlife property rights was, however, far from over. Those who had opposed the transfer of, for example, Amboseli to the Maasai were to continue with their campaign to wrestle these rights from the Maasai. In so doing, they would have the ear of a state whose appetite for the revenue from the wildlife sector made it amenable to joining a coalition of those ready to raid the Maasai of their wildlife property rights. This context was to define the struggle for wildlife property rights in Kenya (and for our specific reference, Maasailand as well) during the postcolonial era. Thus, while the colonial state showed tendencies towards devolving wildlife property rights to local communities, these tendencies were largely to be clogged by the appetite of the postcolonial state to lay absolute claims over wildlife property rights.

## **V The State-Communities' Struggle Becomes More Protracted the Postcolonial Phase**

Although the postcolonial state rode to power against a harsh criticism of the colonial wildlife policies, it was to maintain the same, and even intensify the colonial wildlife policies, on coming to power. The postcolonial government's position on wildlife recognized the latter as an important economic asset. Under such circumstances, its desire to dominate the wildlife sector is not surprising. In a resource-strapped economy, free-ranging

resources like wildlife would be jealously guarded as state property. Nevertheless, due to the structural limitations confronting the state ownership of wildlife, the state was forced into the rhetoric of devolution of wildlife property rights to local communities. While the state claimed absolute ownership of wildlife, wildlife continued to intermingle with local communities in ways that the state was unable to prevent. The result was strained community-wildlife relations that spelt doom for the future of wildlife. This forced the state to be amenable to initiatives geared towards addressing local communities' grievances against wildlife. These initiatives assumed the dimension of devolving wildlife property rights to local communities. An analysis of these devolution initiatives demonstrates that the state can only concede control of wildlife to local communities on the state's own terms.

## **VI Wildlife-People Position in the Imagination of the Postcolonial State**

The postcolonial state emerged against a background of a populist wildlife policy. During the anti-colonial struggle, nationalist leaders promised people that they would abolish the hostile colonial wildlife policies (see, for example, Gibson, 1999).<sup>111</sup> As indicated in the preceding pages, the wildlife landscape in the colonial era had been racialized to the extent that the Africans considered the whites as enjoying privileged access to wildlife. The Maasai, for example, even when they may not have felt offended by exclusion from access to hunting, had grievances against wildlife because of the damage it imposed on them while they got nothing from it in return. Hence, by 1958, their "attitude toward wildlife had

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<sup>111</sup>However, Kaunda was later to claim that the nationalist rhetoric against colonial wildlife policy was a ploy to marshal support against colonialism. The nationalist leaders never intended to abolish the colonial wildlife conservation structures because they had recognized the significance of wildlife (Gibson, 1999: 180, n. 138).

deteriorated to such an extent that most of them favored destruction of all wildlife animals in Amboseli” (Ofcansky, 2002:71, see also pp.104-105). This situation was thus good fodder for nationalist agitation.

Nevertheless, once colonial domination ceased, the postcolonial state not only retained the colonial wildlife ideology and practice (for example, of privileging a protected area system governed through a fines and fence approach), but also extended it (Gibson, 1999). In most countries, for example, while many more wildlife protected areas were added, none were opened up (to be a protected area system that included human activity) let alone being abolished altogether. The leaders of the postcolonial state publicly advocated for the merit of wildlife conservation and hence, the need for the public to see wildlife conservation as not only a national duty, but as a human responsibility as well (Bonner, 1993; Ofcansky, 2002; Steinhart, 2006). Although these leaders posited the question of wildlife conservation in terms of the responsibility bestowed on society by the rest of the world and posterity, the role of wildlife in the economic health of the emerging state was also uppermost in their choice to conserve a wildlife estate.<sup>112</sup> Given the political economy of underdevelopment of the emerging postcolonial state, the need to harness natural resources that could be exploited fairly easily (such as wildlife) was easily recognized.

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<sup>112</sup>While this argument applies in Kenya, it has a practical problem in Tanzania. Nyerere’s Ujamaa government seems to have had problems supporting a wildlife estate that was perceived to cater solely to a foreign clientele and out of reach for most Tanzanians. Under Ujamaa, tourism was hotly debated, with some leftists arguing it was a bourgeois lifestyle inconsistent with socialist ideals. Other issues had to do with the possible exploitative nature of tourism (Myers, 1972; Shivji, 1973; Ofcansky, 2002; Waters, 2006). Nevertheless, the argument could still hold because the limitation became relevant only towards the end of the first decade of independence. Initially, Tanzania had taken the road to capitalist development; it only abandoned this after it failed to secure financial assistance it had factored into its first Five-Year Development Plan of 1964 (Ake, 1996:20). Consequently, it shifted to a socialist strategy in 1967. In any case, in the Arusha Declaration section on the need to protect wildlife, Nyerere had underscored the role wildlife would play in people’s livelihoods (Ofcansky, 2002).

The Kenya government underscored in various statements the centrality of wildlife in the economic development of the state. In these pronouncements, the state makes it crystal clear that the wildlife estate should be under its sway. In an economic blueprint issued two years into independence, the state's ownership of natural resources was clearly spelt out (RoK, 1965). This laying of stake to state ownership of wildlife was motivated by the role the state saw wildlife playing in the economic development of the country. The state observed that the "importance of wildlife to Kenya's future prosperity must be appreciated by everyone and national parks and reserves must be protected and preserved" (RoK, 1965: para. 110). In order to harness wildlife for this prosperity, the state in addition to promising to protect and preserve existing wildlife areas, also proposed, again for economic rationale, to create new wildlife protected areas. The 1975 policy statement on wildlife provided that,

The Government shall seek the creation of new National Parks and Reserves and County Council Reserves, in accordance with its over-riding objective to optimize returns from wildlife.... (RoK, 1975: par. 51)

To operationalize this policy statement, the government had planned in its 1974-1978 Development Plan to initiate a major development programme of new parks and reserves "...designed to fill an important gap in the development of the tourism industry" (RoK, 1974: 180). The state further observed that natural resources such as wildlife can be subject to thoughtless destruction which must thus be brought under control because it threatens the future of the nation (RoK, 1965: para. 110). The linking of natural resources, among them wildlife, to prosperity, the future, and posterity can be seen as the laying of the foundation for the mentality of state expropriation of wildlife property rights.

Having asserted the significance of these resources to the nation, the state then moved to claim the legitimacy of intruding in the production process, thereby reining in on, among others, wildlife property rights. Proceeding from the way the state tackled the question of

land ownership, where the state was ready to concede individual title but yet not willing to be excluded from having a say in land management (RoK, 1965), it becomes apparent that the expropriation of wildlife by the state, and the denial of private wildlife property rights, would be a foregone conclusion. With respect to the question of land ownership, the state argued that the African practice was different from the European tradition that recognized absolute ownership of land.

Nevertheless, it also recognized that even in Europe, the tradition of absolute proprietorship has been discredited and that “today the right of the state to guide, plan, and even order the uses to which property will be put is universally recognized and unquestioned” (RoK, 1965: para. 29). Grafting this latest development in Europe to Africa, the state argued that even though the ownership of land must be made more definite and explicit, it does not follow that society would give up its stake in how resources are used. To buttress this desire for control, it observed that “Indeed, it is a fundamental characteristic of African Socialism that society has a duty to plan, guide and control the uses of all productive resources” (RoK, 1965: para. 30). Thus, the state was justifying its intent to control natural resources.

In a reference that reads like an a priori reply to the principal claims of the contemporary CBC argument, the state objected to the contention that private ownership would guarantee proper use of resources. It averred that

To imagine...that the appropriate ownership will guarantee the proper use of productive assets are errors of great magnitude. Ownership can be abused whether private or public and ways must be found to control resource use in either case. African Socialism must rely on planning to determine the appropriate uses of productive resources on a range of controls to ensure that plans are carried out (RoK, 1965: para. 31).

How did the state plan to determine the appropriate uses of productive resources such as wildlife?

The state situated wildlife within the tourism sector. The state viewed tourism with special interest “because it requires little or no subsidy, is an important source of foreign exchange, ...and has a vast potential for growth” (RoK, 1965: para. 124). Noting that Kenya’s tourism is basically premised on game viewing, the state, therefore, observed that “The long-term future of tourism in Kenya depends very much on conservation and management of wild life according to scientific principles” (RoK, 1965: para. 124). The question that remained, then, was to decide who was to shoulder this responsibility. In conceptualizing this responsibility, the state seems to have had no difficulties. It concluded in a terse statement that “Parks, tourist roads and wild life management are Government functions” (RoK, 1965: para.125). Thus, the state was clear that the wildlife sector was under its sway.

In this scheme of things, the question of devolution of property rights to locals was, therefore, something that the state would only entertain on its own terms. With respect to the question of formulating policies to conserve natural resources, including wildlife, the state was to formulate the same while the people were merely to “....be fully informed of their role in conservation” (RoK, 1965: para.142, sec. 32). It is then evident that the state did not intend to cede wildlife property rights to local communities. This becomes apparent when the state issued a policy paper on wildlife conservation in which the spirit of the foregoing claim that the people were to be informed is put in practice. With respect to the devolution of wildlife property rights to local communities, the 1975 statement on wildlife policy is, at best, a study in contradiction.

In the 1975 statement on wildlife conservation and management, the state reiterated its intent to control the wildlife sector. As shown above, this intent was again situated within the context of the significance of wildlife to the national economy. Thus, wildlife was conceptualized as property. In the opening sentence of the government policy on wildlife management in Kenya, the government stated that its “...fundamental goal with respect to Wildlife is to optimize the returns from this resource,...” (RoK, 1975: par. 1). This time, however, the local communities were included as part of those to benefit from the wildlife resources (RoK, 1975: par.8). The 1975 Statement on wildlife policy was quite sensitive to the incorporation of landowners into the wildlife sector, but this incorporation was largely subordinated to the department of Wildlife Service. Thus, even when the state wanted local communities to benefit from wildlife, this was to happen under the tutelage of the former.

However, there is a sense in which the state seems to portray a split personality in the way it conceptualized relationship with local communities. At one time it suggests that local communities should be free to conceive how they utilize wildlife, which suggests something akin to the state conceding devolution. With respect to the relationship between the Wildlife Service and local communities, for example, it states that while the direct game management and regulation of commercial activities remained to be discussed,

The main point, however, is that Wildlife Service Officers must cease to be mainly policemen, telling landowners what they cannot do, and increasingly become their advisers, in carrying out activities designed for their benefit (RoK, 1975: par. 37).

This is precisely the language that local communities would like to hear. It resonates well with their version of devolution.

The problem, however, is that when the regulatory activities are introduced, the wildlife service agency is given such a discretion that its advisory role as conceived in the



foregoing citation is compromised. The Minister and the Service are given powers to set up regulations to govern the wildlife sector. The control given to them is such that even the statement concedes that that control is overarching. It states,

These blanket powers are sufficient to control every aspect of wildlife utilization. It is important that many of these issues be handled by way of regulations rather than legislative provisions, in order that regulations may be flexible in the light of changing circumstances (RoK, 1975: par.39).

Thus, even the policy statement admits that the powers of the state over wildlife are enormous. The question of flexibility opens up room for administrative fiat. This is discomfoting to the landholder interested in entrepreneurship in the wildlife sector, because it hinders a regime of predictability that they would like to see in place within the sector. Such a situation then is not consistent with devolution of property rights to local communities.

To the contrary, it entrenches state control of wildlife even under circumstances where the state would wish to involve local communities (as entrepreneurs in the wildlife industry). The idea then is that involvement of local communities has to take place within the constraints of the state. The state justified this situation thus:

A large measure of administrative discretion regarding issue and withdrawal of licenses and permits is necessary, since it is difficult to secure evidence sufficiently conclusive, to lead to conviction in the Courts for infringement of some necessary game laws and regulations (RoK, 1975: par. 40).

What emerges from this justification is the extent to which the state was averse to entrusting wildlife to other entities. Consequently, it betrays the desire to cling to wildlife as a resource, while only allowing others to participate on its own terms (as opposed to the terms that the proponents of CBC put forward).

The desire of the state to bring the wildlife estate under its sway becomes even more evident with the state's policy to take over even the wildlife protected areas hitherto under agencies other than the central government. Some wildlife Reserves were under the respective local authorities (such as Amboseli and Maasai Mara) under arrangements set up by the departing colonial authorities. The independent state pursued a policy that would see the Wildlife Service take over the management of these wildlife Reserves. In its statement of policy towards parks, it held that

The Wildlife Service shall eventually be responsible for management of all National Parks, National Reserves and County Council Game Reserves. The dates at which the Wildlife Service takes over management of particular Reserves will depend upon financial and personnel availabilities, the ability of particular County Councils to manage their Reserves competently in the meantime, and the time required to negotiate acceptable agreements with each County Council (RoK, 1975: par.50; see also RoK, 1974: 181).

Thus, what is revealed here is a desire towards centralization rather than devolution. The state is pursuing its conviction as upheld in the 1965 policy cited earlier that the domain of productive resources, especially natural resources, falls under its sway.

This conviction was given legal effect in the 1977 Wildlife Act. The Act provided that areas administered by local authorities as game reserves could remain so but the Minister, after consultation with the local authorities, could direct otherwise (RoK, 1977a: sec. 18(6)). This provision gives the state a window through which they could take even those wildlife property rights already enjoyed by certain local communities. Thus the local authorities in charge of such reserves could never claim to have absolute powers over the reserves, in so far as the Minister reserved the right to intervene and possibly upset the status

quo.<sup>113</sup> It is then evident that the state, having formed an opinion on the value of wildlife, moved to insulate itself against possibilities of losing control over wildlife to other actors on the scene. Thus, it can then be observed that given the state's conceptualization of wildlife as a state largesse, the state would be unwilling to devolve. Nevertheless, the state faced certain constraints that forced it to concede the existence of other actors in the wildlife sector. It was these constraints and the pressure from these other actors that were to force the state into the rhetoric of devolution.

## **VII Compelling the State to Concede Wildlife Property Rights to Communities**

As shown above, the state was unequivocal in laying claim to the ownership of wildlife. Under ordinary circumstances it would have nothing to do with challenges to that ownership from other segments of society. Certain structural limitations, however, forced it to focus on communities' right to the wildlife largesse. Wildlife, unlike other natural resources, poses a unique problem in its ownership. This is because it is a fugitive resource, and secondly, it is pretty destructive to land-use activities other than its own proliferation. This presents a dual challenge to its presumed owner--namely, that it can be easily appropriated, albeit illegally, by others, and it is also difficult to control it from inflicting damage on private property, thereby making the wildlife owner incur liability. However, using its comparative advantage as the wielder of legitimate force, the state can impose its preferences on society with regard to the latter challenge. It can, and does, decide not to recognize liability to damages imposed

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<sup>113</sup>This had already happened with respect to Amboseli, while it is the locals' militancy that has saved Narok's Maasai Mara so that the state has so far not been able to do what it did with Amboseli. In 2004, for example, the Minister for Environment and Natural Resources had initiated moves to intervene in the Maasai Mara. At a KWS wildlife conference, community members warned the minister against implementing the ideas he had on the Mara. The issue seems to have died.

on other legal persons by wildlife.<sup>114</sup> But while the state can get away with the latter challenge, it is constrained in terms of how it can deal with the former challenge.

Illegal appropriation of wildlife can be legislated against, but enforcement mechanisms are, more often than not, beyond the capacity of the state. The state law enforcement agencies cannot monitor wildlife wherever it goes. Hence, with minimal effort, communities can appropriate wildlife as an open-access resource. This illegal appropriation of game, known in local parlance as the bush meat trade, is said to be responsible for the massive decline in wildlife numbers in most of Africa, Kenya included (EAWLS 5: 2004; Barnett, 2002). Wildlife sector observers argue that this phenomenon of bush meat trade could be arrested if communities had a stake in wildlife. In the absence of such a stake, as is the case under absolute state ownership of wildlife, communities lack the incentive to check the bush meat menace.

There is also another respect in which communities' lack of interest in wildlife is seen as contributing to the decline in wildlife numbers. This is in the destruction of wildlife habitat. Although the state claims, and has instituted, a legal regime that empowers it to dictate land-use activities even on private land (see, for example, RoK, 1986; RoK, 1999), apparently it has been unable to implement land-use planning that would not be fatal to wildlife production. Consequently, communities owning land that is also crucial as wildlife habitat continue to practice land-use strategies that destroy wildlife habitat. Studies on wildlife decline suggest that such decline is proportional to the reduction of wildlife habitat as measured in terms of land being put under cultivation and thereby ceasing to support wildlife production (see, for example, Reid et al, 2002; DRSRS, 2004).

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<sup>114</sup> This happened, for example, in the 1989 amendment of the Wildlife (Conservation and Management) Act that removed compensation for farmers for damages from wildlife (RoK, 1989: sec. 11).

Thus, a combination of poaching and habitat loss came to be identified as responsible for wildlife decline, thereby leading the state and other conservation actors to think in terms of how communities can be brought in to help stem the tide of decline. The result was a series of initiatives geared towards incorporating communities living with wildlife into the project of wildlife conservation. These initiatives, discussed below, nevertheless failed to satisfy communities, and this led to their clamor for a more structured devolution strategy (i.e. devolution of a wildlife property rights regime that is embedded in law).

### **VIII Initiatives in Devolution of Wildlife Property Rights by the Postcolonial State**

The initiatives that the state (and its conservation partners) took to accommodate communities in wildlife conservation assumed several forms. These forms included quotas for wildlife harvesting (cropping and sports-hunting), revenue-sharing, leasing land to wildlife utilization (easements), and assistance in setting up wildlife enterprises. Some of these initiatives, such as sports-hunting, were a continuation of what the independent state inherited from the colonial state. This was perhaps the only fool-proof case of attempted devolution. The other initiatives concern non-consumptive utilization, and because they take part in private land, to refer to them as instances of devolution of wildlife property rights to local communities would seem to present some difficulties. Proprietors of either private or communal lands just take advantage of the presence of wildlife in their lands. To do this, they do not need the signature of KWS because the sight of animals is not copyrighted. Seeing them, therefore, does not constitute a violation of any patent law.<sup>115</sup> If anything, it

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<sup>115</sup>There may be a problem in the argument, given the experience of Tanzania where appropriation of wildlife in private or communal lands is prohibited by the Wildlife Division. The cross-referencing of the Kenyan situation with that of Tanzania is, however, erroneous. In Tanzania, prohibition is embedded in law (albeit a contentious legislation) (MNRT, 2002a). The Wildlife Division first

would appear that it is the landowners who are devolving land property rights to KWS; landowners are allowing KWS to come into their lands by making their lands habitable for wildlife. Otherwise, if landowners are not to be conceived as devolving land property rights to the state for its wildlife, then the presence of wildlife in private land would constitute trespass, to the extent that the state claims ownership of wildlife.

With respect to consumptive utilization, prior to the ban on hunting in 1977 (RoK, 1977b) the state allowed landowners to run hunting blocks on their lands. Sports-hunting outfitters were supposed to conduct hunting on private land only after producing written consent from such owners. This was devolution of wildlife property rights to local communities at its best. It was supported both by wildlife policy and wildlife law. The 1975 Wildlife Policy provided that

At the option of the landowner the Wildlife Service will undertake to handle bookings for the parcel, subject to conditions specified by the landowner, to manage behavior of hunters on the land in accordance with those conditions,...and to collect and remit fees accruing to the landowner. In case where the landowner elects to handle his own bookings, or to make other arrangements (e.g. concessions) the Wildlife Service must approve the bookings procedures...and the landowner must undertake to keep...relevant information required by the Service (RoK, 1975, par 71).

Thus the Policy envisaged a situation whereby landowners would have full rights over wildlife assigned to them. This right was given effect by the 1976 Wildlife Act (RoK, 1977a). The Act protected landowners from invasion by either the sports-hunters or the wildlife authorities. The Act provided that a license officer could not endorse a hunting license unless,

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declares private or communal lands to be Game Controlled Areas, prior to prohibiting the owners from wildlife use without the permission of the Wildlife Division. Thus, there is an attempt to attack the ownership rights of such lands, making the situation in Tanzania different from Kenya's. In the latter, the law does not give KWS such powers (although land use may be regulated or alienated for wildlife conservation. But the owners vacate the land and are compensated).

- (a) the holder of the license is the owner of the land concerned; or
- (b) the person applying for endorsement produces to the licensing officer the written consent of the owner of the land thereto (RoK, 1977a, sec 29(1));

It is clear then that the landowners even reserved the right to decide who hunts on their lands.

In the event a landowner decided to register her land as a facility for hunting, such land could be registered by the Wildlife Service

subject to such conditions as to the giving of notice to the landowner...or as to the types of animals which may be hunted, as the owner may specify (RoK, 1977a, sec 29(2 b)).

In this case, the rights of the landowner included not just determining access to her land by the hunters, but also the type of animals to be hunted. The landowners were also paid fees for the hunted animals in a proportion that was to be prescribed by the Service. In case of lands under local authorities, fees were paid to the Council. Both Narok and Kajiado County Councils were beneficiaries of this devolution of wildlife property rights. In Kajiado, the Maasai already had a hunting association and they leased out hunting concessions (Western, 1994).

Apart from sports-hunting, the state also endeavored to expand the scope of wildlife utilization (that would presumably benefit landowners). Between 1971 and 1977, the government together with donor agencies introduced a Wildlife Management Project in Kajiado district. The project sought to explore the possibilities of starting game meat production in Kenya's arid lands. The evaluation of the project, after a pilot phase, concluded that game meat production was not viable; the project was, therefore, abandoned (Parkipuny and Berger, 1993; Western, 1994; Coffman, 2000; Kameri-Mbote, 2002). Thus, by the time of the ban on hunting, communities were benefiting from devolution of wildlife property rights. With the ban on hunting, they lost these rights already entrenched in law.

Since 1977 then, any wildlife property rights they have enjoyed have been at the pleasure of the bureaucrats at the Wildlife Service department; they have not been codified in statute. Two such wildlife property rights have been operational, namely, the wildlife utilization fee in Amboseli, and a pilot wildlife cropping project that was in force between 1992-2003. Narok was effectively edged out because Maasai Mara remained a reserve under the Narok County Council. There was no pilot cropping scheme in Narok.

Prior to 1974, the Maasai of Amboseli had wildlife property rights both in the Amboseli game reserve, and in wildlife outside the reserve. When the government took over Amboseli in 1974 from Kajiado county council, the Maasai lost the former rights. The latter right was lost with the ban on sports-hunting in 1977. This latter loss was never mitigated, but the 1974 alienation of Amboseli basin had been mitigated through a bargain between the Maasai and the state. The bargain covered the loss of use of Amboseli basin (the dry season grazing refuge for the Maasai), and the access of Maasai Group Ranches by wildlife during the wet season. (Wildlife access to Group Ranch pasture was not an issue when the Maasai run Amboseli reserve because it was assumed that it was in their interests to maintain the wildlife range if Amboseli was to remain viable as a tourist destination, and hence an asset to the Maasai. After the state took over Amboseli, the access of Maasai Group Ranch pasture had to be contracted for.)

The Amboseli bargain was negotiated between 1974 and 1977. The bargain gave the Maasai certain concessions in lieu of the loss of Amboseli to the state (Lindsay, 1987; Talbot and Olindo, 1990; Western, 1994). These concessions included, inter alia, provision of water supply (piping from swamp and boreholes) for Maasai cattle in lieu of using the swamps inside the Amboseli basin. There was to be revenue-sharing whereby the National Parks



Trustees were to run the park and collect the gate fees but the Maasai were to receive a share of the gate fees (oral sources claim this share was to be 25% of the gate collection) and the trustees were to retain locally recruited staff such as rangers, scouts, and lodge employees. The government was also to develop infrastructure in form of wildlife viewing circuits. These infrastructural developments would enable communities to derive direct economic benefits from tourist camp sites and revenue from trophy hunting. In addition, the government was to provide such social services as schools, dispensary, and community centre. In order for the Maasai to grant wildlife access to Group Ranch land, the Group Ranches bordering Amboseli were to be paid an easement or wildlife utilization fee.

In the 1974-1977 Amboseli bargain, therefore, there is evidence of attempts at devolution of wildlife property rights to the local communities because these communities claimed a share of wildlife largesse. This dispensation, however, did not last for long. It collapsed in stages. First, the communities ceased getting any revenue from trophy hunting consequent to the ban on hunting. Later on, the water system worked for some time, but then collapsed (and so the Maasai went back to the park). Similarly, the wildlife utilization fee was distributed well up to about 1981, and then it became irregular and finally fizzled out (Talbot and Olindo, 1990; Western, 1994). With the collapse of the Amboseli bargain, communities lost any claim to wildlife property rights and the state became the sole claimant to wildlife property rights. The situation remained like this until the 1990s when KWS introduced pilot wildlife cropping and bird shooting schemes.

The pilot wildlife cropping was implemented in certain districts, among them Kajiado District. Private landholders were given quotas to harvest wildlife in close collaboration with KWS. Before a quota could be given, both the private landholders and KWS could mount a

game count on which the wildlife cropping quota was based. The cropping scheme, however, limited landowners on the uses to which they could put the wildlife property rights devolved to them. Some commentators claim that it had no legal authority because it was contrary to the law banning hunting. Thus, in a sense, landowners were beholden to the goodwill of KWS and government officials. This meant that landowners could not invest in it because there was no security guarantee for their investments (Kameri-Mbote, 2002: 142). In terms of specific utilization, landowners could not practice sports-hunting, nor could they process the hides and skins. The limitation on the processing of hides and skins was attributed to the ban on trade in wildlife products that accompanied the 1977 ban on sports-hunting (RoK, 1978). As a result, the hides and skins were being exported raw, thereby fetching much less than their actual value. Further, in 2002, the government imposed a twenty percent export duty on all unprocessed hides and skins. This reduced the viability of cropping even more.

The overall evaluation of the value of cropping by landowners was that it was not a paying venture. Some argued that sometimes the operational costs could not even be recovered. One commentator of the wildlife sector claimed that landowners involved in the cropping scheme were merely scavenging; because it denied them the opportunity to add value to wildlife property rights, they were then merely eking out what they could without even re-investing in the resource (EAWLS 9, 2003). During various KWWG meetings, wildlife entrepreneurial arguments were made about how things could have been different had landowners been allowed to practice sports-hunting. It was claimed, for example, that a buffalo disposed of through cropping fetched about Ksh. 40,000, while it could fetch ten

times that through sports-hunting.<sup>116</sup> As a result of such limitations, some members of KWWG initiated discussions with KWS in 2003 on the production of a policy on cropping (KWWG 5, 2003). Thus, when KWS banned the pilot wildlife cropping scheme later in the year, it came as a surprise to the landowners. Several district wildlife fora expressed their outrage at the ban, citing the inconvenience it would cause to wildlife-related ventures, including wildlife security provided by landowners because this security was funded from cropping revenue (KWWG 9, 2003).

The ban was preceded by an evaluation of the pilot wildlife cropping project. A consultancy group was engaged for this purpose, but conflicting reports surround the outcome of this consultancy, with both sides of the wildlife utilization divide siding with aspects of the reports that favored the outcome convenient to them. What seems undeniable is the fact that the report generated controversy. During a discussion on cropping by KWWG, one of the issues that was raised was that

Since the past consultancy study on cropping could highly influence views of decision makers (Director of KWS), there was need for a review of the findings of the study by stakeholders (KWWG 5, 2003).

Even before such views could be floated, it appears that KWS had formed the opinion that the report that found that the scheme was a failure was the one to be adopted. In a commentary on the local media, the Director of KWS pointed to a correlation between wildlife cropping and an upsurge in poaching and bush-meat trade (E.Afri. March 31-April 6, 2003). A landowner challenged the Director on these views, and while the Director acknowledged the role of landowners as partners in conservation (KWWG 5, 2003), KWS

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<sup>116</sup>An American hunter told me that he paid \$US10,000 to hunt a cape buffalo in South Africa. In Kenyan currency, this is Ksh720, 000. In Tanzania, the trophy fee for a buffalo is \$US 600 (the equivalent of Ksh 42,000).

nevertheless terminated the pilot wildlife cropping scheme. A similar fate befell the Game Birds shooting scheme.

The Game Birds shooting program had been instituted as a result of "...prolonged and intense negotiations by diverse stakeholders" with KWS (KWWG 7, 2003). A committee was formed to run the scheme, and KWS was a member of this committee. In 2003, KWS disbanded the committee, claiming that it was illegitimate. What infuriated the landowners about this disbanding of the committee was that by the time of doing so, some landowners had already contracted with clients and done some bookings based on the authorizations granted to them by the Game Birds Committee. Landowners, therefore, felt that the action by KWS was not only unfortunate but also irresponsible (KWWG 7, 2003). Moreover, there were also grievances of landowners over the fact that KWS had not been remitting booking fees to landowners (KWWG 9, 2003). Landowners were, therefore, forming the opinion that "...by not honoring an agreement reached with landowners, KWS had proved an unfaithful partner, unfit for business" (KWWG 9, 2003).

By terminating these two schemes, KWS extinguished any claim there was about devolution of wildlife property rights to local communities. Taking place simultaneously with the evolving of an umbrella body of landowners living with wildlife in their lands, these developments fueled landholders' clamor for a wildlife legal regime that would guarantee the rights of landholders to the wildlife estate free from KWS administrative fiat. Landowners now wanted to be recognized in both wildlife policy and law as legitimate claimants to the wildlife largesse. To do so, they felt that they needed to abandon the endeavors to secure

economic rights through KWS, but rather, struggle for the legal rights through a political process in order to secure their economic rights.<sup>117</sup>

Nevertheless, the foregoing should not mask the fact that there are wildlife enterprises going on among various landowners living with wildlife in their lands. Some of these ventures have even been supported by KWS in terms of actual financial inputs. This was actually the case after 1992 when KWS established the Community Wildlife Service (CWS) department. The objective of this department was to facilitate the flow of wildlife benefits to communities who interact with wildlife outside the protected areas. It was hoped that this would create trust and dialogue between KWS and those communities and, therefore, motivate communities to participate in sustainable wildlife conservation and utilisation programmes for their own economic gains. Through it, some of the financial benefits accruing from wildlife conservation were to be channelled to local communities in the form of social services such as schools, health facilities, water supply and cattle dips (see, e.g. KWS 1, 1990; KWS 1, 1994).

Some of these ventures were funded through various donor-supported initiatives such as the Conservation of Biodiverse Resource Areas (COBRA) project that was funded by USAID. Among the community-funded projects within Kajiado and Narok (respectively) were Kimana, Eselenkei, Olgulului; and Olchoro Oiroua (private), and Koiyaki Lamek community wildlife projects. A review of these projects by the time the funding cycle ended claimed that the objectives of turning community attitude in favor of wildlife had been achieved, thereby suggesting that communities had started reaping benefits from wildlife (see, for example, COBRA 1, 1994; Little, n.d.; Hall, n.d.). Hall, for example, claimed that

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<sup>117</sup>I borrow the conceptualization of property rights in terms of, inter alia, economic and legal rights from Barzel (1997).

Benefits have been generated for communities residing in major dispersal areas for wildlife and adjacent to National Parks and Reserves, primarily through revenue sharing and to a more limited extent from enterprise development. Perhaps more important, community attitudes toward KWS as the steward of the nation's wildlife resources and toward that possibility of deriving meaningful economic and other benefits from community-based conservation and management have radically changed, especially in the focal areas of the COBRA project (Hall, n.d.:1).

While Hall returned optimistic observations, his colleague in the evaluation team was more cautious. Little observed that

At this point there are still too few income-generating activities that have been implemented to assess whether or not COBRA's main assumption—i.e., that providing local socioeconomic benefits from wildlife-based activities will enhance management and conservation outside of protected areas—is correct (Little, n.d.: 6-7).

My own experience would tend to be more sympathetic with Little's position. While it is true that money has been expended on these areas, there still seems to be some disconnect between communities and the conservation project. When I asked communities bordering Amboseli and Maasai Mara whether they know of any benefits that they have gained from living with wildlife, the popular opinion was in the negative. This was in contradistinction to their eloquence in narrating the predicaments of living with wildlife.

Whatever the verdict that could be passed about these landholder wildlife ventures, however, it would not undermine the claim that they do not constitute devolution of wildlife property rights to landholders in the sense that cropping and sports-hunting, for example, did involve devolution. In these ventures, there are no rights over wildlife that KWS cedes to communities. What KWS is involved in with these ventures is an act of charity. This act of making a gesture, not devolution, is actually its stated public position; one of its public relations releases states that:

The Kenya Wildlife Service has recognized the need to reciprocate the commitment and sacrifice made by Kenyan communities to the conservation of wildlife in Kenya's protected areas (KWS 1, 1994: 1).

And, consistent with this thinking, implementers of the COBRA project found one of “COBRA Constraints” to be the “Increased perceptions amongst some target groups that WDF/revenue-sharing is a “right” without concomitant “obligations” and responsibilities” (COBRA 1, 1994). One would have imagined that by virtue of providing land and absorbing externalities from the wildlife, as landholders think they do, they have already had more than enough of their obligations and responsibilities. Thus, for the COBRA project team to see a dichotomy in the relationship between “right” and “obligations” in community thinking suggests that the team was aware they were not in a devolution process but something akin to provision of charity services. It is this attitude that provided KWWG with the impetus to negotiate its claim in the wildlife sector through the political process that culminated in the GG Kariuki parliamentary bill to amend the Wildlife Conservation and Management Act, 1989. The next chapter will examine the struggle for wildlife property rights at the political level within the context of the GG Kariuki Bill.

## **IX Conclusion: State Reluctance to Devolve Wildlife property Rights Evident**

The theme that emerges from the foregoing discussion is one of the struggles for devolution of wildlife property rights since the colonial period, and how the state has toyed with the idea while dealing with local communities in a manner that skews the bulk of authority to itself, rather than to local communities. Thus, while recognizing communities as claimants to the largesse of the wildlife sector, the distributional gains of the sector have made it difficult for the state to withdraw its pervasive presence. The result has been a see-saw of the devolution

of wildlife property rights projects to the local communities. Any endeavors that were initiated towards devolving these rights to the locals were geared towards persuading the communities to accommodate wildlife in their lands. These initiatives did not assume the pattern of creating a private property rights consciousness, because the state's presence in the sector remained paramount. It was this failure to confer on communities a predictable private ownership of wildlife property rights that triggered the clamor for a legal recognition of the community stake in the wildlife property rights. As we will demonstrate in the next chapter, an attempt by communities to secure the legal ownership of these gains has so far been a failure, thereby indicating that the state is either unwilling or incapable of relinquishing wildlife property rights to local communities.



**Chapter V**  
**The Political Struggle for Devolution of Wildlife Property Rights in Kenya:**  
**An Attempt to Amend the Wildlife Conservation Act**

**I Abstract**

The preceding chapter examined the failure by the state to guarantee the devolution of wildlife property rights to local communities through the bureaucratic process. Faced by this predicament, and against a background of state sluggishness and dilly-dallying in reviewing wildlife legislation, landowners hosting wildlife in their lands sought a political solution that could confer on them the legal right to wildlife largesse. Consequently, they initiated amendments to the wildlife legislation to accommodate their interests. This move assumed the form of a private members parliamentary bill to amend the Wildlife Act. The Member of Parliament sponsoring the bill worked in concert with the Kenya Wildlife Working Group (KWWG). The move triggered a series of lobbying efforts for and against the Bill. The Bill was finally passed by Parliament, but it failed to secure Presidential assent in order to become law. Thus the state failed at the political level to accede to the devolution of wildlife property rights to local communities.

This chapter examines the failed attempt by landowners to secure wildlife property rights through the political process. It is argued here that the state inability or unwillingness to devolve wildlife property rights to local communities could be a result of interaction of two factors, one, economic self-interest as per the claim of the previous chapter, and two, convergence of the interests of the state with those of Green NGOs who are alleged to hold it hostage through KWS.

## II Introduction

The Wildlife (Conservation and Management) Amendment Bill, 2004 (also known as the GG Bill<sup>118</sup>) provides ample terrain of examining the question of whether the state in Africa can devolve wildlife property rights to local communities so as to engender in them a private property rights consciousness in wildlife as envisioned by the proponents of CBC. The GG Bill was a watershed in the politics of the wildlife policy-making in Kenya because of the nature of public involvement in the events leading up to the adoption of the bill by Parliament and its subsequent rejection by the President. Previous turning points in the wildlife policy-making in Kenya were basically bureaucratic shows. Even when these landmarks in wildlife policy were processed through Parliament, such as the 1989 Amendment to the Wildlife Act, the public was simply treated to a legal by-product that was conceived in the image of the state. This was because community representation was through a prostrate Parliament (Widner, 1992; Barkan, 1992).<sup>119</sup> The GG Bill was, however, different. For the first time, community interests became a defining issue in the drafting and debating the wildlife conservation regime.

It can be argued that it was the activities of KWWG that gave the GG Bill the limelight it may not otherwise have generated. Prior to the GG Bill, communities hosting wildlife in their lands and who considered themselves wildlife producers, were not organized as a producer community, unlike other communities with agrarian interests such as coffee, tea and sugar. Consequently, during the development of government programs on wildlife, if

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<sup>118</sup>It is so-called because GG Kariuki, the MP for Laikipia West, sponsored it.

<sup>119</sup>Some people even hold that the Sixth Parliament was unconstitutional because some Members of Parliament did not go through the formal electoral process. They won the ruling party nominations and were declared sole candidates as per party regulations, but these were not statutory electoral regulations.

these communities acted, they did so as individuals or amorphous groupings without presenting any concerted community front on the wildlife issue(s) of the day. Nevertheless, this scenario was reversed during the GG Bill. The GG Bill generated a lot of attention among the conservation protagonists to an extent that the politics of devolution of wildlife property rights to local communities was more protracted among these protagonists than between the local communities and the state. The state was targeted by the belligerents on both sides of the conservation divide to either accede to or reject the GG Bill. From the point of view of the Bill's proponents, the fact that the communities living with wildlife failed to secure their preferred outcomes only goes to show the extent to which the state is enamored against devolving wildlife property rights to these communities in ways other than those it deems fit (see, for example, Scott, 1998). This conclusion, however, need to be tempered with the observation that the state failure was sanitized by the opponents of the Bill who also laid claims to community interests. The state associated its action with this group, thereby suggesting it was acting in the interests of the communities.

### **III Context of the Rise of GG Bill**

#### **Costs to Communities Living with Wildlife**

Kenya's wildlife conservation is bifurcated between protected and non-protected areas. The protected areas harbor wildlife estimated at ten to thirty percent while the non-protected areas absorb the rest, estimated at seventy to ninety percent.<sup>120</sup> It can be claimed that the demand

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<sup>120</sup>Some commentators in the Kenyan conservation scene dispute the claim. Leakey, for instance, argues that the claim no longer holds because population growth has displaced wildlife from the open range habitat, forcing game to retreat into the Protected Areas (Leakey, 2001).

on non-protected areas could even be absolute since the wildlife in the other areas occasionally require the former as migratory corridors and dispersal areas. Non-protected areas are private lands and, therefore, wildlife in these areas occupies private property. This does not make them private property, though. They still remain public property (controversial, though, as the question of ownership of wildlife remains), bringing in a situation where public property is on private land.<sup>121</sup> Thus there is a tragedy of the commons on private land.<sup>122</sup> It is against this background that the private cost of producing a public good (in this case, wildlife) should be conceptualized. Perhaps to dramatize the full implications of this “privateness” in the production of Kenya’s wildlife as a public good, one can consider the interface between protected and non-protected areas and note the clear distinction, lopsided as it is, between the two. While private lands are expected to host wildlife, landowners’ livestock is excluded, and with reprisals for infraction, from venturing into protected areas.

Although wildlife can roam from the parks into the private lands, landowners and their livestock have no right of access to the parks. This is the law; and the protected area managers implement it with zeal. It is then clear that the private cost of maintaining a national wildlife constituency in Kenya is borne by the private landowners. Ali Kaka captures this landowner, who incurs private cost thus,

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<sup>121</sup>Okoth-Ogendo (1991) has alluded to this question as a problem of the nature of public interest in private property.

<sup>122</sup>This can be referred to as the tragedy of the commons in reverse. Unlike the classical Tragedy of the Commons in Garret Hardins (1968) where private interests wreak havoc on common property, common interests in Kenyan wildlife are wreaking havoc on private property. (David Hopecraft’s remarks during an EAWLS monthly seminar in Nairobi drew my attention to the paradox.)

That small-scale farmer who stays up all night, then has his family take the day shift to keep his one crop safe, that school child who has to stay home and go to school late and leave school early, that fisherman who cannot fish anymore, that woman who has lost her husband or child...people who go hungry and become destitute beggars (sic) because of the wildlife that we enjoy and protect (Kaka, n.d.).

This raises the question whether the cost borne by landowners is against certain benefits.

Landowners answer this question in the negative (KWWG, 2003-04).

While wildlife at the national level is an asset, this should not mask the fact that to the landowners it has been a liability. Although landowners have virtually no benefits to show from wildlife, they count losses not only in terms of opportunity costs of hosting wildlife, but also direct costs imposed by wildlife damage [see Table 4] (KWS, 2003-2004).

Table 4. Cost imposed on communities (Kajiado district) by wildlife: 2003- 2004 (May)<sup>123</sup>

<b>Cost/damage</b>	<b>No. of incidences</b>	<b>Extent of damage</b>
Threat	17	
Predation	79	-sheep and goats injured/killed: 208 - cows injured/killed: 18
Crops	179	In most cases: extensive
Disease	3	Enormous death of livestock
Property	1	

Source: KWS (Community Wildlife Service dept.) field returns 2003-2004 (May).

Even a casual glance at the media pages in Kenya would throw undisputable light on the predicaments besetting communities living with wildlife. Media headlines tell of the agony of communities grieving from human attacks or deaths caused by wildlife, curfew on movement imposed on villagers by marauding wildlife, livestock lost to predators and acres of cultivated land reduced to bare ground by browsers, and then there is the stress imposed

<sup>123</sup>The figures are largely underreported. Most community members do not bother reporting the costs they incur since there is no compensation. To visit wildlife authorities in order to report wildlife damages is considered a waste of time and resources.

on grazing and watering resources and hence the consequent competition over these resources between livestock and wildlife (see, for example, figure 2).

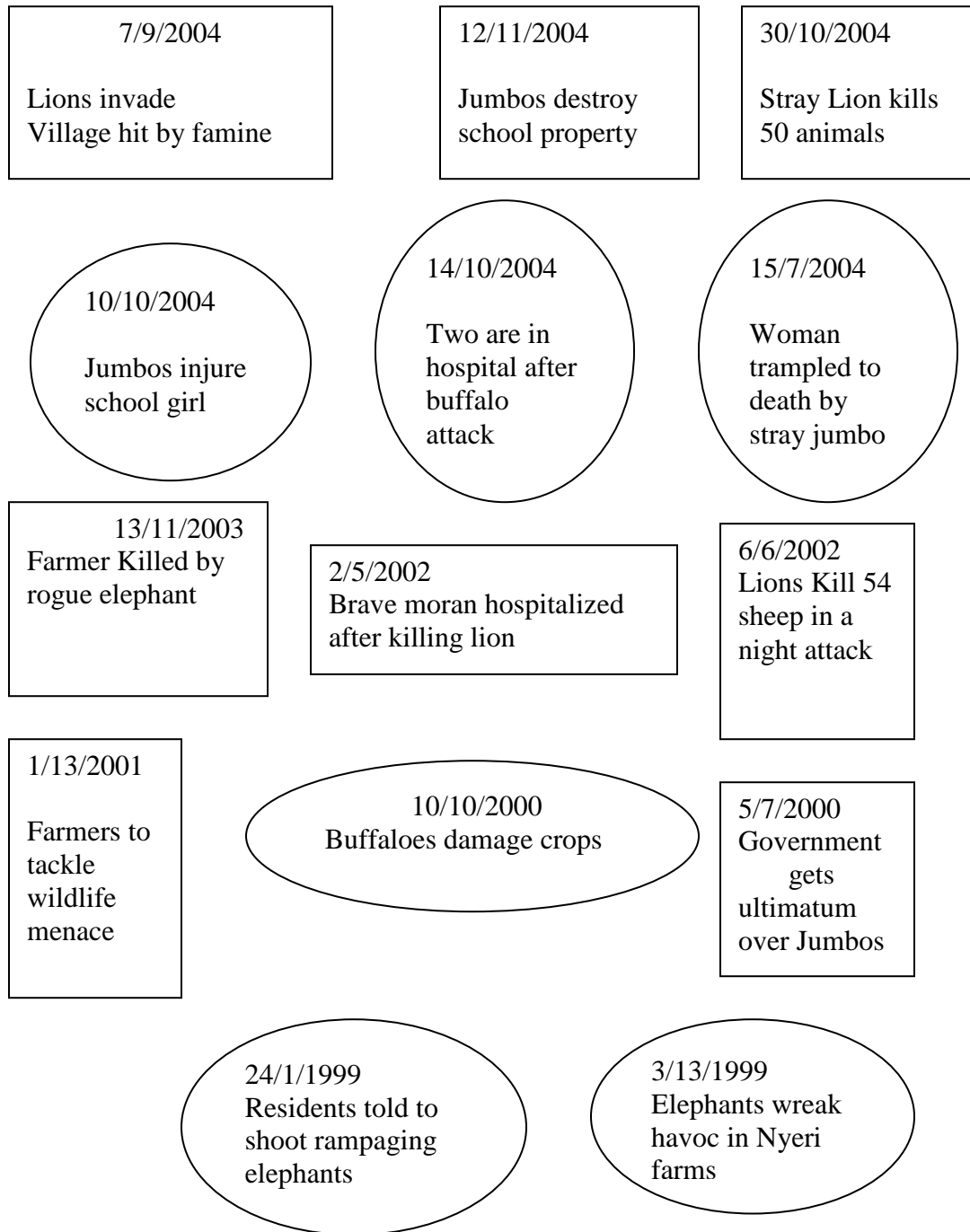


Figure 2: Sample of media headings announcing wildlife havoc on communities.  
(Ref. Daily Nation Group of Newspapers & The Standard newspaper.)

As a result of these experiences, politicians have complained and condemned this lopsided relationship between their constituents and the wildlife sector. Nevertheless, these presentations never yielded much positive response from the authorities. It was against this background that the Member of Parliament spearheading the 2004 Wildlife Amendment Act situated his efforts.

### **GG Kariuki's Arguments: the Commoners as Free-riders**

In a meeting with the KWWG (KWWG 4, 2004) Honorable GG Kariuki, argued that in undertaking this project, he was motivated by the need to redress the gross injustices caused to communities by game animals. He averred that this is the issue of major concern to parliamentarians who are familiar with the damages caused by wildlife to their constituents albeit they may not be conversant with the management of wildlife. He posited that his concern was how the wildlife will not eat the maize of his mother, and that he does not understand any other language. It follows, therefore, he argued, that while many people speak about money that Kenya earns from wildlife, such claims are not important to people suffering from wildlife damage. Hence, there was need for landowners to have a say on animals in their lands. This necessity, he contented, needed to be understood in light of the fact that landowners have other alternatives to wildlife such as keeping goats, etc. To this extent, he argued that if Kenyans want to retain wildlife as a national asset, then they must be prepared to pay for its upkeep. This is contrary to the current dispensation whereby Kenyans want to conserve wildlife yet they are not willing to spend money on it. It was this situation that his proposal set out to rectify. Two issues emerge from this narrative; one, the governance of the wildlife sector, and two, the question of human-wildlife conflict.

Wildlife governance in Kenya is state-centric. Landowners are excluded from the wildlife governance regime and yet they are the ones that bear the cost of sustaining a wildlife estate. Past policy and legal initiatives led to this state of affairs because those initiatives that provided for a redress failed to be effected by the government, even as it undertook initiatives that undercut communities' clout in the wildlife sector. The former include the 1977 legal notice that banned hunting (RoK, 1977b), the 1978 Act No. 5 that banned trade in wildlife and wildlife products (RoK, 1978), the 1984 Presidential directive prohibiting all hunting and capture of wildlife (KWS, 1996: 6), and more notoriously, the 1989 Wildlife (Conservation and Management) Amendment Act (RoK, 1989). Positive initiatives that were dispensed with included the 1965 Sessional Paper No. 10 (RoK, 1965), the 1975 Statement on Wildlife Policy (RoK, 1975), aspects of the 1976 Wildlife Act (RoK, 1977a), the 1994 KWS 5-Person Review Group report (KWS, 1996), and the 1996 Draft Wildlife Bill (Wanjala and Kibwana, 1996).

As pointed out in the previous chapter, the 1965 Sessional Paper No. 10 ruled out the possibility of giving landowners the kind of property rights in wildlife that would make the criticism of the sector as leveled by Hon. GG Kariuki unnecessary. By privileging the interests of the state, it set the stage for the problems that the GG Bill proposed to reverse: the state's desires to retain wildlife largesse, while unwilling to spend money on it. Although the 1975 state's policy on wildlife somehow remedied this predisposition, it was subverted by the law enacted to implement the policy. The Wildlife Act of 1976 (RoK, 1977a) downplayed the economic approach to wildlife conservation and held that economic utilization of wildlife would be "incidental", otherwise, preservation (and, therefore, not



conservation<sup>124</sup>) was to be the norm. Nevertheless, the 1976 Wildlife Act was sensitive to the politics of wildlife conservation in two ways. It provided for landowners to benefit from wildlife, and secondly, it upheld the right for compensation for wildlife damage. Nevertheless, these novel provisions were soon subverted by subsequent policies and legal actions of the state.

In 1977, the state banned sports hunting as a land-use strategy (RoK, 1977b). By banning sports hunting, the state stultified a glorious initial attempt at devolving wildlife control to local communities. In the following year, trade in wildlife products was also outlawed, and in 1979, dealers' licenses were banned (RoK, 1978). These actions rendered wildlife utilization to become a full-blown issue in Kenya. Henceforth, the politics of wildlife conservation became bifurcated between those for consumptive utilization (specifically sports hunting) and those against. Among the latter were animal rights NGOs and organized lobbies of tour operators and hoteliers who were averse to consumptive utilization.<sup>125</sup> While the Green NGOs cast their argument in terms of the decimation of species, the latter argued that it was inimical to the photo-tourism enterprises they were involved in. Without an organization, the landowners could not counter the interests of the organized lobbies.

This community inertia came out starkly in 1989 when Parliament passed an amendment to the Wildlife Act that abrogated the legal right for compensation of property damaged by wildlife (RoK, 1989). One would have assumed that while the civil bureaucracy in charge of wildlife can countenance such an act, at least the people's representatives could

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<sup>124</sup>Critics of the non-consumptive use of wildlife pejoratively refer to preservation as leaving a resource undisturbed, while conservation is used favorably to refer to wise use.

<sup>125</sup> Wildlife entrepreneurs are organized around the Kenya Association of Tour Operators (KATO), Hotel and Caterers Association and Kenya Tourists Federation (KTF).

not. Yet, Parliament enacted into law such an attack on private property. Although it can be argued that this abolition was insignificant to the landowners because compensation existed merely on paper, abolishing it meant that even if the state was able and willing to pay in future, that could not be done unless the Wildlife Act was amended again. This implied increased transaction costs to the landowners.

Ironically, this attack on private property took place at a time when in the parent Wildlife Act and in the amendments being introduced, the name of the organization was branded as a “Wildlife Service” (RoK, 1989). The rendition of ‘service’ was presumably meant to signify that the entity should make the interests of the people interacting with wildlife uppermost (see, for example, Kameri-Mbote (2002)).<sup>126</sup> The bureaucrats in charge of the wildlife body apparently did not take note of such expectations. With respect to the 1989 amendment, for example, they were seemingly interested in the abolition of compensation more than in the mandate conferred on them to render “service” to the landowners. When they were confronted, for example, with claims of compensation by farmers who had suffered damage from wildlife after the 1989 amendment, they took cover under the Act and claimed that they were not legally bound to accept liability for wildlife damage (see, for example, HCCC, 1998; KWS, 1996). Thus with the enactment of the 1989 Wildlife Amendment Act, the interests of the landowners remained marginalized until 1994 and 1996 when, through bureaucratic- sponsored examinations of the wildlife sector, they

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<sup>126</sup> Kameri-Mbote (2002: 105), referencing Western, says the term ‘service’ was introduced deliberately in the 1989 amendment to the parent Wildlife Act to convey the message that the new organisation was expected to contribute to the welfare of communities. In 1989, however, the term was not new to the Wildlife Act. Even the parent Act referred to the wildlife body as a “service”, and not a department, even though in popular use, people used department (Wildlife Conservation and Management Department). In the parent Act, it is actually defined as a “Wildlife Conservation and Management Service”, not department (RoK, 1977a: sec 2, 3 (1). Its officers are referred to as officers of the “service”, even as it refers to other organizations such as Fisheries as departments (RoK, 1977a: sec 3(4), 5(1)b, c).

raised issues of interests to themselves.<sup>127</sup> These attempts did not, however, materialize into anything valuable to them.

Initiatives that sought to give landowners some lifeline but which were arrested before they materialized include the 1994 Kenya Wildlife Review on wildlife-human conflicts (KWS, 1996), and the 1996 draft of the Wildlife Act (Wanjala and Kibwana, 1996). An attempt to chart the way forward for wildlife utilization initiated by KWS through a workshop with wildlife stakeholders in 2004 did not yield any substantive result in terms of adoption of policy. The 1994 KWS review solicited and reported on landowners' views regarding problems and solutions on wildlife-human conflicts. In its two specific recommendations, the review group called for a new legislation on wildlife utilization so as to ensure that landowners receive benefits from hosting wildlife (KWS, 1996: ix).<sup>128</sup> These attempts received stiff opposition from interested parties in the conservation sector such that even a decade down the line, KWS was still holding discussions about wildlife utilization (Coffman, 2000; KWS Conf. 2004). Moreover, even the less handsome form of utilization, wildlife cropping, was being discontinued (KWWG, 2003). One of the most interesting cases of these aborted initiatives was the 1996 attempted review of the Wildlife Act.

The 1996 proposal to review the wildlife Act was sponsored by KWS through a grant from USAID. KWS engaged consultants who solicited views and drafted a wildlife bill for legislation by the state. The draft bill recognized landowners as having user rights over

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<sup>127</sup> An exception to this could be the Court of Appeal ruling that held that to the extent that KWS has a responsibility to landowners, then it can be held liable for wildlife damage and landowners can seek remedy in the courts in case of wildlife damage (HCCC, 1998).

<sup>128</sup> The issue whether the review group recommended re-introduction of sport-hunting is controversial. Some commentators claimed that some members of the review group disowned the recommendations and averred that it had been smuggled into the review group's report after they submitted it to KWS (see, for example, Opanga, 1997).

wildlife in their lands. Within this context, it is significant to note that the draft Bill re-introduced sports hunting and gave landowners a preponderant say in determining who hunts and the animals to be hunted in their lands. Landowners were also to be paid a fee by the hunters operating in their lands. The draft also sought to formalize the institution of Community Wildlife Association such that they would become recognized under the law. Such Associations could have wildlife user rights devolved to them, and these rights could include both consumptive and non-consumptive utilization. These provisions of the draft Bill with respect to the landowners is precisely what landowners had been calling for. To this extent, had the draft legislation been enacted into law, it would have gone a long way in mitigating the grievances of the landowners in so far as benefiting from wildlife in their lands is concerned. Unfortunately, the draft Bill withered somewhere within the administrative hierarchy and, so far, there is no clear-cut statement as to where it stalled. Even within KWS, some officials publicly claim that they do not know what became of it (EAWLS 9, 2003) while others claim it was returned because it was not consultative enough (EAWLS kcb, 2004). Other sources aver that it went up to the cabinet level but then it was withdrawn mysteriously (KWWG 7, 2004; EAWLS 12, 2004 KCB).<sup>129</sup>

Thus prior to the GG Bill, there were notable attempts to achieve what it aspired for. These initiatives failed to go as far as the GG Bill did. Apparently, only those initiatives limiting the interests of the landowners were being effected. To this extent, the GG Bill was a watershed in the politics of communities and wildlife conservation in Kenya. It is claimed in this study that it was the degree of landowners involvement in the GG Bill that accounts for the mileage it covered. While the Members of Parliament debating the GG Bill had more

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<sup>129</sup> This sounds similar to what is reported in Tanzania with respect to the structure of the Environmental agencies (see, Leat, 1999 (ch. 5 n. 12)).

leeway (as a multi-party Parliament) to go against the state interests than those of the 1989 Parliament, it was still possible for the GG Bill to be defeated on the floor of Parliament. The forces opposed to the outcomes that landowners pursued could have lobbied and combined forces with the state to sway the vote against the Bill. This possibility was undermined, however, by the presence of a strong overt lobbying by the landowners (organized around KWWG), a phenomenon that was new in the wildlife conservation politics in Kenya. As we demonstrate below, KWWG was thus the power behind the passage of the GG Bill.

#### **IV The Kenya Wildlife Working Group (KWWG)**

As pointed out earlier, landowners hosting wildlife in their lands did not have a formidable national institution prior to the rise of KWWG in 2003. Moreover, it was not until 1991 when KWS asked landowners to organize themselves into wildlife forums. The rationale for this initiative was that KWS had come to realize that it could not manage wildlife on its own and, therefore, it sought to incorporate landowners in a structured way, hence the need to have them organized (EAWLS 11, 2003; KWS Conf. 2004). KWS arrived at this conclusion in its “Policy Framework and Development Programme” that it produced in 1990 (KWS 1, 1990). The policy framework recommended, among others, that “Landowners should organise themselves to obtain better deals from the tourism industry and to offer a better wildlife ‘product’ by improving management of the wildlife and the tourism environment (KWS 1, 1990: Annex 6: 12; Hall, n.d.). According to one respondent who was an official of the original wildlife forum, it was the KWS Director who in 1994 facilitated the formation and secured funding for the first National Wildlife Forum. The Director also arranged for the

forum to be accommodated at the KWS headquarters as it organized itself so that it could stand on its own. As a result of this recognition of the significance of landowners, KWS set up a new department called “Community Wildlife Service.”

Thus, in spite of the current tensions between KWWG (the successor of the first National Wildlife Forum) and KWS, it would appear that KWS initially did not see an organized landowners’ lobby as a threat. Indeed, protagonists in the formation of the first wildlife forum observe that initially, it was actually the politicians who were alarmed at the idea of organizing landowners into a national forum. Politicians are said to have been suspicious of these wildlife associations; “They wonder, why are these groups forming?” (San Diego Union-Tribune, 1995). One respondent actually confirmed that this apprehension existed among senior state officials. In one meeting of the forum that was attended by the registrar of societies, the registrar reportedly told the landowners that the government was reluctant to register such organizations because it was not clear what role they would play in the wildlife policy framework as wildlife was under state management.

### **Constraints in Initial Forum Formation**

This first attempt to form a national wildlife forum, however, did not succeed. None of those who talked about it seemed to be clear what had happened, but it does seem it had problems with its donors who stopped funding it. Others claim that the donor was pressurized by interested parties to discontinue funding it in order to stifle its growth. Yet, others claim that it collapsed after it lost the support of KWS consequent to a change of guard there. Nevertheless, regional wildlife fora survived. The work of these fora included coordinating wildlife utilization, organizing income-generating enterprises and liaising with wildlife

authorities (KWS, 1996:16). It was these district wildlife fora that re-grouped in 2003 to form a national umbrella body, KWWG.

### **Formation of KWWG: Composition, Objectives and Mandate**

KWWG operates as a sub-committee of the EAWLS, though it is now registered as a Trust. It is run by a Board of Trustees; the trustees are drawn from each district forum. So far, there are over 12 district wildlife fora that form KWWG. Although it started as a grouping of landowners hosting wildlife, it now accommodates other parties with an interest in wildlife conservation such as the Kenya Tourist Federation (KTF) (KWWG, 2003j). Other interested parties such as individual researchers (like this researcher) are allowed to attend meetings but have no voting power. The KWWG Trust Deed defines a wildlife forum as

any group or body of people the majority of whom are landowners or members of land owning communities or people professionally or economically involved in either or both the sustained consumptive and/or non-consumptive uses of wild animals on agricultural or pastoral land. In the event of doubt over whether a particular group or body qualifies as a Wildlife Forum the decision of a two thirds majority of the Trustees shall prevail (KWWG Trust, 2004).

At the forum level, the members include individual owners of small, medium and large holdings, communal owners of Group Ranches, shareholders in land companies and land users of trust lands (KWWG, 2003a).

In forming the national umbrella body, the fora benefited from the intervention of international environmental actors. USAID provided the initial financial base that enabled KWWG to stamp its mark on Kenya's conservation arena. USAID had initiated a program known as CORE (Conservation of Resources through Enterprise) whose broad mandate was to enhance conservation and management of natural resources through increased benefits to

landowners living adjacent to wildlife parks and reserves (CORE-net 1, 2001). Among the objectives of CORE was to increase capacity to conserve and manage natural resources outside protected areas and it was within this context that the CORE program sought to develop the district wildlife fora through EAWLS. Through this support, trustees from district wildlife fora were facilitated in holding monthly and lobbying meetings mostly in Nairobi, or any other place that they deemed strategic. Among the objectives of the Trust that guided their activities was that of

giving land owners and land owning communities an effective voice in making policies that relate to them, their land and the wild animals that live on that land... (and) facilitating and encouraging continuous dialogue between landowners and land owning communities and Kenya's legislators, administrators, Government, the commercial sector of the economy and any other interested parties (KWWG Trust, 2004).

It is in this context that KWWG was able to liaise with Hon. GG Kariuki and other Members of Parliament in a sequel that culminated in the passage of the Wildlife (Conservation and Management) Amendment Bill, 2004 by Parliament. USAID was thus a central actor in the activities surrounding KWWG and the GG Bill.

### **KWWG and the GG Bill**

Given KWWG's understanding of its mandate as seen above, it diagnosed the predicament besetting its members as being rooted in the existing wildlife legislation. Consequently, its first task was to secure amendments to the Wildlife Act in order to incorporate the interests of the landowners. At the same time, Hon. GG Kariuki was working on a Bill to amend the Wildlife Act. KWWG sought to throw its weight behind his initiative. Once KWWG managed to link up with Hon. GG Kariuki, the next phase was to lobby parliamentarians to



support the GG Bill. It was in the process of lobbying parliamentarians that KWWG attracted the attention of other actors in the conservation sector who espoused values different from those KWWG sought to achieve through the GG Bill. The two camps engaged in a protracted struggle that was played out in several fora.

### **KWWG's Two-pronged Strategic Approach**

In its lobbying strategy, KWWG pursued a two-pronged approach. It sought to work within the establishment and hence pursued dialogue with KWS and the Minister in charge of wildlife. At this point, it was hoped that they could influence the wildlife policy from within. With this mindset, they were banking on the fact that a new government had been instituted in Kenya and that it was more receptive to public participation in the management of public affairs. In this setting, the popular opinion on the ground in Kenya was that policy makers and policy implementers could now make decisions without having to wait for directives from the powerbrokers in State House as was the case in the previous regimes.

### **KWWG's Bumpy Ride with the Ministry**

While it was relatively clear that cabinet ministers and state corporation executives now enjoyed more leverage in making decisions than previously, this was not the same as saying that they had become more socially responsive to public intervention in the running of public affairs. The political leadership and the bureaucrats working under them merely appropriated to themselves the new liberty to make decisions within their dockets to assert their power and run new centers of power brokerage outside of State House.<sup>130</sup> Thus when KWWG

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<sup>130</sup>It was a classic re-enactment of Mamdani's notion of decentralized despotism (Mamdani, 1996). Cases include (KWS Director) Wamithi's dissolution of the cropping project without consulting the

approached both the minister for wildlife and the Director of KWS to sue for a cooperative approach between the wildlife bureaucrats and the landowners, they found that other parties with interests diametrically opposed to theirs had actually been there earlier. Nevertheless, they still hoped that they could make their case with a favorable hearing from these wildlife authorities. As shown below, this approach proved bumpy.

During KWWG's first call on the minister, both the top ministry bureaucrats and KWS director were present. Thus, it was a fairly well constituted meeting. The KWWG

reported that the visit was a big success. The petition was well received and issues raised noted with the seriousness they deserve. The presence of the Director of KWS (Michael Wamithi), the PS, and an Assistant Minister (Professor Wangare Mathai) on the ministers team attested to the importance of the meeting (KWWG 3, 2003).

KWWG made it clear to the minister that their objectives could be achieved under the current Act if only KWS would cooperate with landowners. Specifically, they wanted to be consulted by KWS and to be represented in KWS. They seem to have gotten this petition through (albeit for a short while). In their report, they observed that

An assurance was made that Landowners would be consulted to ensure their views and interests are adequate (sic) represented on the KWS Board of Trustees....The Minister registered enthusiasm for further dialogue and willingness to visit individual wildlife fora. The Director of KWS positively responded to the petition and expressed willingness to work with wildlife fora (KWWG 3, 2003).

The KWWG delegation, although satisfied that the meeting went on well, at the same time sensed that the task ahead was likely to be rough. This feeling emanated from their assessment of some of the comments that came out of the meeting. During the meeting, both

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Board of Trustees (KWWG 11, 2003), the stand off between Maseno University and the Ministry of Education over re-admission of students who had been dismissed for various (alleged political) crimes; and the minister in charge of wildlife dismissing the Director of KWS, yet according to the regulations the President issued as part of the State Corporation Act, the oversight of state corporation CEOs is the responsibility of the corporation's board, who were supposed to operate autonomously (RoK, 2004a).

the minister and the assistant minister said that they had over-flown Tsavo national park and they saw no wildlife. According to them, there was a decline in wildlife and they seemed to attribute this to the pilot wildlife cropping program. KWWG nursed the fears that the ministry could have been captured by opponents of consumptive utilization.<sup>131</sup> These fears were soon to be confirmed when KWWG's letters to the minister soon began to go unanswered. For example in the July monthly meeting,

The Secretariat confirmed having sent a letter to the Minister of Environment, Natural Resources and Wildlife, seeking an appointment for him to meet a delegation of KWWG of which no feedback had been received....The Secretariat reported having sent a letter to the Chairman of KWS seeking to have a meeting between him and KWWG members of which there has been no feedback (KWWG 7, 2003).

KWWG began to feel that the minister, perhaps under the influence of KWS director, may be holding the view that KWWG is a non-entity that is not even registered. By the end of the year, even the director of EAWLS confirmed to KWWG that they need not bother going to the minister because he appeared to have shut doors even to EAWLS.<sup>132</sup> Indeed, there had been an exchange between the director of EAWLS and his counterpart at KWS because the latter had written to the former complaining that EAWLS was being derogatory by supporting KWWG (KWWG 10, 2003).

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<sup>131</sup>Before the meeting with the minister, KWWG drafted briefs on bush meat trade and the economics and sustainability of wildlife use and how these impact on conservation (KWWG 3, 2003). The briefs were drafted and sent to the Minister, including an invitation for him to attend the monthly meeting for April, 2003. By the next monthly meeting, no feedback had been received (KWWG 4, 2003).

<sup>132</sup>As mentioned earlier, it was a sub-committee of EAWLS. EAWLS had a bone to pick with the ministry over a court case they had filed during the previous regime and they were not agreed with the new regime how the case could be treated. This could have precipitated sour relations between them and the minister (KWWG 2, 2004).

The failure to strike a rapport with the ministry's top-brass does not seem to have had anything to do with the personalities there. Between the beginning of the GG Bill's initiative and its enactment into law by Parliament, KWWG dealt with three different ministers in charge of wildlife.<sup>133</sup> KWWG again made attempts to work with the second minister. There was actually more enthusiasm about a better rapport with him because he and the chair of KWWG came from the same region, thereby signaling the possibilities of informal networking, at least, in terms of booking appointments with him. Moreover, the new assistant minister was also from the same region as the chair, and furthermore, his constituency is a hot-bed of wildlife menace.<sup>134</sup> He could thus be conceptualized as a natural ally. Thus, in terms of the personalities at the ministry headquarters, the fortunes of KWWG looked bright. When KWWG delegation visited the minister, he was described as having been very friendly. In its written report, KWWG delegation referred to its presentation to the minister as having been made "...to an alert and jovial minister" (KWWG, 2004c). Although during the informal evaluations of the meeting some delegates noted that the minister went out of his way to be friendly,<sup>135</sup> they were also quick to point out that "but then he is a politician" (KWWG 8, 2004). This meant that he could be double-faced, a view reinforced by his position on the GG. Bill. The delegation concluded that he did not like the idea of GG Bill because he claimed that the initiative would rather be taken over by the ministry.

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<sup>133</sup>The second minister came following a cabinet reshuffle, while the third was acting after the death of the substantive minister.

<sup>134</sup>The assistant minister for Tourism and Wildlife, Boniface Mganga, is from Taita, the district that hosts the expansive Tsavo East and West National Parks.

<sup>135</sup>The minister, for example, told KWWG that in his second day in office, he received presentations on how bad KWWG was (KWWG 8, 2004). He said it was a smear campaign to discredit KWWG. Certainly, KWWG members must have felt relieved on hearing that the minister did not buy the allegations.

Unfortunately, the minister passed away before there were follow-up meetings. How their relationship could have unfolded is now a matter of speculation, but one thing that may be predicted is that KWWG was still going to be encountering rough terrain. Two indices point to this direction.

In one respect, there was the minister's reservation about the GG Bill; yet KWWG could not afford to give in to this as will be shown below. Secondly, KWWG chairman reported in the subsequent KWWG meeting that the KWS director had been quoted as saying that when KWWG met the minister, they were thrown out through the window and that now the whole thing about the GG Bill was in the hands of the government (KWWG 8, 2004).<sup>136</sup> While KWWG could not tell whether the director was privy to the minister's mind, the need to be alert was underscored just incase the director was vindicated. The tenure of the third (acting) minister began after the Bill had made advances in Parliament. As such, it was largely uneventful in terms of KWWG lobbying for his support.

### **KWWG'S Recourse to the National Assembly; the Ground Work and Focus**

Following these actual and anticipated frustrations with wildlife authorities KWWG found it necessary to take their cause before the legislators. The idea was to lobby the ministry, but to do so simultaneously with the lobbying of parliamentarians just in case the struggle reached the floor of the National Assembly. KWWG first moved into Parliament through the window presented by the Pastoralists Parliamentary Forum. This is an informal grouping of MPs from pastoral areas that is used to rally support for pastoralist interests in and outside

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<sup>136</sup>KWWG chair was so serious about the allegation that he stated he wanted to be quoted though he knew a KWS representative was in attendance. At a certain point, KWS, which experienced a succession of directors between the initiation of the GG Bill and debate in Parliament, used to attend KWWG's monthly meetings. This was after KWWG started making in-roads at the ministry headquarters and Parliament.

Parliament. Almost all pastoral areas are endowed with wildlife and thus most of these MPs were perceived as sympathetic to wildlife-based issues. KWWG also had the advantage of access to the Speaker of the National Assembly by virtue of him being one of their own as a landowner in the wildlife and pastoralist areas. The linkage with the Speaker proved a good anchor to their contact with Members of Parliament and even the minister in charge of wildlife (KWWG 4, 2003). Occasionally, KWWG, and especially its chair, would make forays into Parliament to lobby MPs and discuss with them aspects of the proposed Bill. The sequel of this approach was the formation of an informal parliamentary committee on wildlife.<sup>137</sup> Its aim was to sensitize MPs on law reform within the wildlife sector (KWWG 3, 2004).

KWWG began holding meetings with parliamentarians where they conversed for things like the need to have a formal wildlife policy, and the need to amend certain sections of the current wildlife Act to accommodate the interests of landowners. The meetings were facilitated by a grant to KWWG from USAID. These meetings took the form of brief luncheons or retreat where KWWG got resource persons to take the parliamentarians through the key issues that needed to be undertaken. After one luncheon that was held in Nairobi, KWWG came out exuding confidence on the progress they were making in their lobbying activities. During a review of the luncheon in the subsequent monthly meeting,

Members noted that the luncheon was a big success as pertains sensitizing MP's on the proposed wildlife policy and drawing their input into the document, as well as winning their support to lobby for speedy revival of the national wildlife policy review process. It was noted that due to effective media coverage of the event, and the on-going human wildlife conflicts...MPs and other stakeholders' interest and support for KWWG activities had been aroused (KWWG 7, 2003).

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<sup>137</sup>Parliamentarians from tea, coffee and sugar-growing areas have similar informal outfits.

In another retreat held in Malindi, various papers were presented on aspects of wildlife conservation in Kenya (KWWG 11, 2003). The idea was to have the parliamentarians develop a common front on the wildlife sector. It was actually at this meeting that the parliamentarians' wildlife caucus was launched (EAWLS, 12 kcb 2004).

### **KWWG'S Local and Global Successes**

As the momentum on the GG Bill gained ground, KWWG also began to extend its public relations initiatives to include other actors outside the country who are interested in aspects of wildlife conservation such as consumptive utilization that KWWG sought to have re-introduced in Kenya. Such actors included Safari Club International (SCI). SCI offered to aid KWWG lobbying by paying for a trip to Southern African countries practicing consumptive utilization so that the legislators can have an empirical view of what the industry entails. KWWG also got funding for this tour from USAID through EAWLS. The tour included ministry officials, KWS, MPs, and KWWG Trustees. The tour worked well for KWWG because MPs in it largely agreed with the idea of consumptive utilization. During a seminar organized to receive a report of this tour, one MP claimed that when the GG. Bill comes up for debate he will argue that people have to benefit from wildlife through sports hunting, although it should be controlled (EAWLS 11, 2004). Thus KWWG's lobbying efforts were paying dividends.

KWWG also made its presentations, like other stakeholders, before formal parliamentary institutions such as the public hearing that was held in the Old Chambers of Parliament and the parliamentary committee on Finance, Trade, Tourism and Planning. The latter is a formal committee of Parliament that scrutinizes parliamentary bills after the First

Reading and makes reports and recommendation to Parliament (Parliament, 2004). During the public hearing all attendees were free to express their views, but the formal parliamentary committee only received views from invited parties. These parties were referred in the committee's report to Parliament as "...stakeholders involved in the management of wildlife..."(Parliament, 2004). The "stakeholders" who consulted with the committee were KWS, Kenya Human Wildlife Conflict Management Network (KHWCMN), EAWLS, Laikipia Wildlife Forum, KWWG, and AWF (Parliament, 2004). USAID was also involved in this consultative meeting, and a consultant group that it had commissioned to review the wildlife sector in Kenya made a presentation to the committee.

Thus this cluster represents both the camps involved in the struggle for and against the GG Bill. While KWWG and EAWLS were supportive of the amendment, both KWS and KHWCMN were opposed to the initiative. The opposition cast the GG Bill as an initiative of KWWG, which was portrayed as a grouping of big ranchers out to take advantage of Kenya's wildlife and local communities living with wildlife. The opposition to the GG Bill was thus presented as a critique of the KWWG agenda.

## **V TAKING SIDES**

### **The Anti-KWWG Coalition**

The opposition to the GG Bill was presented by a consortium of NGOs that, arguably, was fronted by the KHWCMN and Youth for Conservation, who also produced its chairman and secretary, respectively (KCWCM 2, 2004; KCWCM 3, 2004; KCWCM 4, 2004; KCWCM 5, 2004). This anti-KWWG coalition was not a factor in Kenya's conservation circles prior to the rise of the GG Bill. As an entity, its creation was a reaction to the GG Bill. They



adopted the name Kenya Coalition for Wildlife Conservation and Management (KCWCM), although in some of their documents, there are variations in how they use this phrase.<sup>138</sup>

In terms of their self-identification, however, they described themselves as “We, the farmers, pastoralists, business people and professionals” from various districts of Kenya that they list in their documents (KCWCM 4, 2004, KCWCM 5, 2004; KCWCM 6, 2004). In the majority of the documents they issued during this period, the member organizations of the coalition were about fourteen, among them Kenya Human Wildlife Conflict Management Network, Youth for Conservation, Kenya Wildlife Coalition, NARC Youth Congress, Action Aid International-Kenya, Center for Minority Rights and Development and the Pastoralists Information Bureau (KCWCM 4, 2004, KCWCM 5, 2004).<sup>139</sup> While many of these organizations existed as individual entities, the Kenya Wildlife Coalition was itself an amalgam of other individual NGOs (and also persons) such as Born Free Foundation-Kenya, International Fund for Animal Welfare (IFAW-Kenya), Youth for Conservation, Bill Woodley Mount Kenya Trust, Friends of Conservation, Pan-African Conservation Network (and, perhaps, many others?).<sup>140</sup> Critical in this consortium, however, was a group of animal rights NGOs that are opposed to consumptive utilization of wildlife and are mostly organized

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<sup>138</sup>Shifting reference of their title betrays the fluidity of their identity, which perhaps suggests that they merely adopted a name to keep going. In other documents, they refer to themselves as “The Coalition for Wildlife Conservation Group or the Kenya Coalition for Conservation and Management” (papers on file with the author).

<sup>139</sup>The membership of Narc Youth Congress and Action-Aid is, if it were formal, quite intriguing. One would expect them to be non-partisan in such ‘wars’ because their members cut across the divide. For Narc Youth Congress, it is most likely that the leadership made personal decisions to join, and then dragged their organizations because having an organization behind one’s membership confers clout to an individual’s standing in the movement. As for Action-Aid International-Kenya, it is difficult to comprehend its membership.

<sup>140</sup>While I did not ask many organizations whether they were members of the Kenya Wildlife Coalition, the majority share values on animal welfare and I had no reason to doubt that they would hang out together.

around the Kenya Wildlife Coalition (KWC). The composition of KWC is significant in that given their values (as animal rightists), it throws some light as to why their opposition to the GG Bill was dominated by an anti-hunting accent.

### **Anti-KWWG Coalition's Opposition to the GG Bill**

In their opposition to the GG Bill, the anti-KWWG coalition, employed several strategies. These included lobbying the parliamentarians, countering the proposals of the proponents of the GG Bill during the various wildlife discussion fora in which the issue was discussed, using the press and street demonstrations. Unlike KWWG that began lobbying parliamentarians early enough when the GG Bill was still at its infancy, the anti-KWWG coalition stepped into the precincts of Parliament after the bill started being processed in Parliament. For instance, it targeted parliamentarians holding meetings outside Parliament. Their approach was to show the parliamentarians why the bill was not appropriate, without necessarily appearing to be opposed to the amendment of the Wildlife Act given that no MP would dare claim that the current Act suffices. Hence, as shown below, their story line was plotted to show that the Bill does not deliver what is required to rectify the current situation, and if anything, it could be worse. The coalition, through one of its scion, the KHWCMN, was invited by the parliamentary committee reviewing the bill to submit their views on the bill. Thus, the anti-KWWG coalition had both formal and informal access to Parliament and, hence, the opportunity to shape the bill as it was processed by Parliament (contrary to what they will claim latter).

With respect to the wider constituency of parliamentarians, the coalition organized a consultative meeting with them in Nairobi in the run up to the debate of the bill in Parliament. The letter of invitation made to the individual MPs read thus,

The Coalition of Wildlife Conservation Group...has now organized a consultative meeting with members of parliament to facilitate dialogue and deepen MPs understanding of the impact of the current Amendment Bill so as to realize a more community and human rights responsive legal regime... The meeting will be attended by other members of parliament from affected areas, policy experts and community representatives ... (KCWCM 3, 2004).

The inclusion of community representatives here may be seen as a tactic to undermine the claim by the proponents of the GG Bill that it represents the interests of communities. Moreover, the idea of deepening MPs' understanding of the GG Bill was founded on the notion propagated by the coalition that the GG Bill did not have community interests as its main force, but rather was a sub-text for private interests cloaked in community garb. In a seminar organized to discuss the bill, the acting minister for Tourism and Wildlife asked a follow-up question to a participant whose self-identification was member of Youth for Conservation: "Are you reducing the bill to the question of hunting?" The participant responded that "there are things hidden in the bill which points towards hunting which we are not prepared for." As will be shown below, among these issues, for example, will be that of compensation and unregulated sports hunting.

It is also evident, at least from the testimony of some MPs, that the coalition lobbied individual MPs against supporting the bill, or associating with KWWG-organized activities that had a bearing on facilitating the adoption of the bill. In the run up to the KWWG-organized tour of MPs to the southern African countries, some of the MPs in the delegation claimed that they were being persuaded by some members of the coalition not to go on the

tour. One of the MPs while giving a report on their experiences and lessons learned from this tour stated that,

A chilling experience during the preparation of the tour was attempts by anti-utilization lobbies to persuade Members of Parliament and Government not to go on this trip. Why should comparing what others do with what we do in Kenya be so frightening? (Hon. Lesirma, 2004).

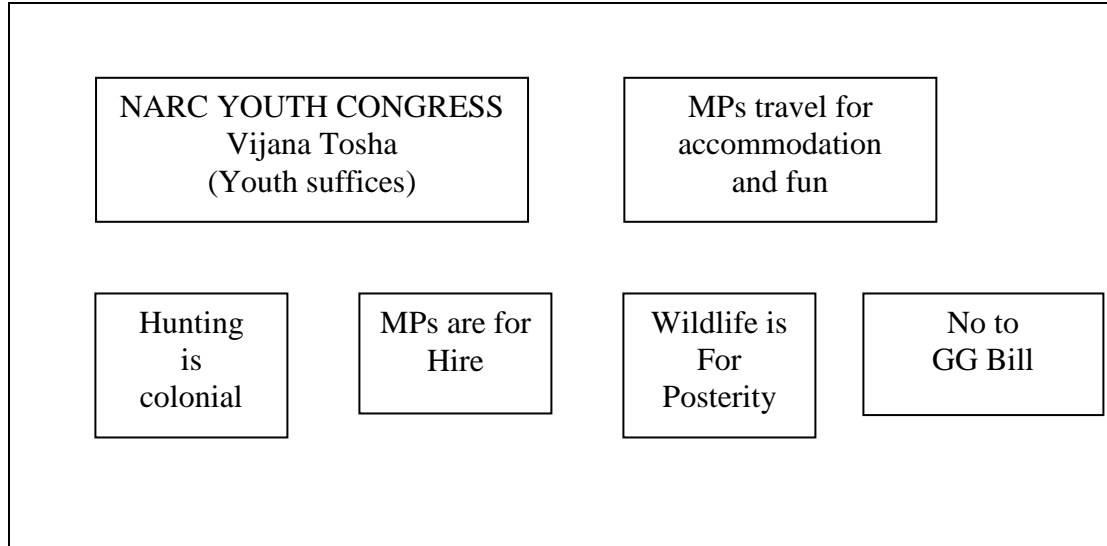
What this approach suggests then is that both camps had access to the MPs and that they lobbied for their preferred positions on this Bill. If it is true that there were attempts to persuade the MPs from participating in the tour, this raises some difficulty in understanding the coalition's objective position because, as will be cited below, one of their grievances against the GG Bill was based on the clause on sport-hunting. The argument of the coalition was, in part, that sports hunting had failed in other areas such as the southern African countries. If this was their case then, the more reason one would expect them to be happy that the MPs were touring southern Africa to get a first-hand experience of how sport-hunting had failed there. Thus it is the coalition, more than the proponents of hunting, who would have wanted the tour to be undertaken because the tour would have made their lobbying even easier.

The coalition also lobbied for the dismissal of the GG Bill in other fora such as the EAWLS monthly seminars. During these monthly meetings, especially those related to consumptive utilization, it was clear that there was a sharp and hostile divide between those for and against. Perhaps the one single forum where this emerged clearly was the one devoted specifically to debating the way forward on wildlife legislation. This was organized by the EAWLS on December 2<sup>nd</sup> to 3<sup>rd</sup>, 2004 in Nairobi and coincided with the week the GG Bill was being debated in Parliament. It was attended by several NGOs, KWS and the acting

minister for Tourism and Wildlife. During the session in which the acting minister was given the floor, he engaged the audience in a discussion about the bill. The speakers from the floor who were opposed to the bill spoke while making it clear who they were and that they were opposed to the bill for reasons that are explained here below.

The other strategies the coalition used to indicate their displeasure with the GG Bill included press releases and demonstrations. These strategies were mostly employed after Parliament passed the GG Bill. There was also an attempt to stage a demonstration during the meeting of December 2<sup>nd</sup> referred to above, but it was not clear that the coalition could explicitly be linked to this demonstration. Nevertheless, the coalition's antagonists were left with little doubt that the coalition was behind the demonstrations. Certain members of the coalition were implicated in the demonstration in the sense that one banner was inscribed with the words of "NARC YOUTH CONGRESS" which, as pointed below, appears in the list of member organizations forming the coalition. But again, one cannot tell whether this was the initiative of an individual member of a member organization, or whether it had the blessings of the member organization and then the coalition. What was clear, however, was that the demonstrators were on the side of the protagonists opposed to the GG Bill. Some of their placards read thus (see figure 3):

(Figure 3: demonstration placards by opponents of the GG Bill)



The demonstration was composed mostly of youth, accompanied by a few elderly people clad in Maasai attire, perhaps a staging device to impress on the community-origins of the demonstrators. Other than for the placards, the demonstration was uneventful, unlike the one that was staged consequent to the passing of the bill by Parliament.

The coalition overtly staged a demonstration against the GG Bill once it was passed by Parliament, but before it had received presidential assent in order to become law. The demonstration was aimed at appealing to the President not to assent to the bill. The coalition publicized the demonstration through the press that was invited to cover the

procession that will present our petition to the President of the Republic of Kenya His Excellency Emillio Mwai Kibaki at his Harambee House office and later one to the Attorney General, Amos Wako, the Minister for Constitutional Affairs Hon Kiraitu Murungi and Ag Minister for Tourism and Wildlife Hon Raphael Tuju at their respective offices. We will converge at Uhuru Park at 11 am and proceed to Harambee House at 11.30 am on Thursday 16<sup>th</sup> December 2004 (KCWCM 4, 2004).

During the demonstration, the coalition issued a press release in which they appealed to the President for his intervention in the GG Bill initiative by not assenting to the bill. They cited reasons for their opposition and the fact that

the local communities will be the major losers if this bill is enacted; ...we hereby appeal to His Excellency the President to refer this Bill back to parliament to allow due constitutional process and appropriate all inclusive amendments thereof (KCWCM 5, 2004).

The press release was copied to the above cabinet ministers "...to advise the president appropriately" (KCWCM 5, 2004). The procession participants are then identified as "For and on behalf of the **Kenya Coalition for Wildlife and Management (Member Organisations below) and local communities representatives:**" (KCWCM 5, 2004) (emphasis in original); below the statement were listed the fourteen organizations.

Thus here was an attempt to appeal to political support by presenting the opposition to the Bill in terms of a popular front. Perhaps this was meant to counteract the image of KWWG as a non-community entity. In the press release, they dismissed KWWG as

the so-called District Wildlife Forums, whose constitution and mandate is not representative of the local communities. They are in essence private members club of a few elite purportedly representing the local communities. We, the local communities, do not recognize them and their entrenchment in law is a disenfranchisement of our involvement in wildlife conservation and management (KCWCM 5, 2004).

This observation, coming at the tail end of the drama for the amendment of the Wildlife Act, confirms that opposition to the bill had a lot to do with turf wars and hence, why one group of representative of communities is dismissed by another as a party of pretenders. There is no evidence, beyond mere claims, that is adduced to show why some are less community representatives than the others. What is undeniable, however, is that while KWWG was gaining ground among MPs, the anti-KWWG coalition was inflicting pressure on KWWG.

KWWG was making little headway beyond the parliamentarians who, as the denouement demonstrated, did not have the last card.<sup>141</sup>

### **KWWG and the Pressures of the Opposition to the GG Bill**

Even though Parliament would finally pass the GG Bill, the activities of the anti-KWWG coalition put a heavy strain on KWWG. These pressures were felt by KWWG at several levels, including its interaction with the ministry in charge of wildlife and KWS, those facilitating its activities such as USAID, and within its ranks where the struggle for the review of the Wildlife Act threatened to split KWWG. As KWWG made headway in Parliament, the ministry seemed to have realized that KWWG cannot just be ignored, whatever its critics were saying about it not being representative. So, to take the thunder away from KWWG, the minister in charge of wildlife started making overtures to the mover of the bill. During the public hearing on the GG Bill that was held in the Old Chambers of Parliament, one MP claimed that the minister is asking them not to move too fast. The MP said that their response to that is that their horses have been held for too long and they cannot wait any longer. Moreover, that it was clear the bill will pass with an overwhelming majority and “not a single MP will oppose it.” He then observed that it was only the World Bank that could now stop the passing of the bill if it threatened to stop aid.<sup>142</sup>

When the ministry failed to slow down the process, it then suggested that it should take over the bill and move it as a ministry’s project. The minister approached the mover

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<sup>141</sup>In strict parliamentary practice, they have the last card because they could still overrule presidential objection. This, however, would require a two-thirds majority of the House, which is impractical in the current Parliament.

<sup>142</sup>This was an allusion to the tendency of the World Bank to attach conditionality to aid. The government would be unable to adopt the Bill if the World Bank confronted it.



who, however, refused to hand over the initiative, leading the minister to seek the intervention of the convener of the MPs wildlife caucus. Nevertheless, there was a cabinet reshuffle before the minister succeeded in taking over the bill. The next minister and even KWS continued with the same approach. KWS trustees were also trying to impress the sponsor of the bill to give them time, but they did not succeed. Part of the explanations for this failure by KWS was that there may have been a communication breakdown (EAWLS 8, 2004). The second minister also expressed his interest to take over the bill. When KWWG visited the minister, he raised the issue of the GG Bill and

noted that the best way forward was to work with the government (his ministry taking charge of the review process), since, he averred, the reasons for taking the Hon. GG route no longer abounds (KWWG, 2004c).

This trend to take over the bill continued with the third minister but apparently Parliament was debating the bill by the time the minister was telling a meeting of stakeholders that he is holding talks with the sponsor of the bill (EAWLS, kcb). Thus, even as the bill went into its final stage, the ministry still had reservations about it.

The pressures on KWWG to accommodate the establishment also came from its “allies” such as USAID. As pointed out earlier, USAID was a critical actor in the life of KWWG because it was literally funding single-handedly the activities of KWWG—especially in the first two years. Thus USAID’s intervention could not be taken lightly. To KWWG, this intervention showed the extent the anti-KWWG lobbies could go to halt its advance. At one time, it was reported in a KWWG meeting that there has been an orchestrated campaign for KWWG to lose funding from USAID (KWWG 3, 2004).<sup>143</sup> Later,

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<sup>143</sup>The idea would be to demobilize the trustees because without donor funding, they were not going to meet frequently in the capital city. Without such meetings to lobby and show some semblance of

an attempt was made by USAID to prevail over KWWG to halt their push for the GG Bill, but the chairman of KWWG said they could only wait for two weeks (KWWG 7, 2004). At one time, USAID even indicated that it was willing to mediate between KWWG and KWS to see if the two could agree on a way forward. USAID asked the director of KWS to come up with a plan to that effect. The chairman of KWWG tried unsuccessfully to pursue this suggestion with the director of KWS (KWWG 8, 2004). Then, KWWG began hearing individual USAID staff (i.e. not official USAID position) express opinion that suggested that USAID was raising issues on the bill similar to those raised by the anti-KWWG coalition. Some of these views included claims such as the lack of education and capacity by district wildlife forums to run a wildlife industry as would obtain if the GG Bill was passed. And then, during a KWWG meeting, “It was learnt that USAID was pushing for comprehensive review as opposed to the Hon. GG’s hot parch/piece meal approach.” (KWWG 9, 2004). This view was popular with the opponents of the bill. It featured prominently, for example, in the stakeholders’ meeting organized by EAWLS to review the bill after the acting minister had asked the participants whether they were all in support of the bill (EAWLS kcb, 2004). The pressures on KWWG also came from within its ranks.

## **VI TOLL OF PARTISANHIP ON KWWG**

### **Imminent Split of KWWG**

KWWG’s push for the GG Bill threatened to split KWWG. Laikipia Wildlife Forum at one time almost pulled out of KWWG, claiming that KWWG’s style was abrasive and not accommodative to other stakeholders in the wildlife sector (such as the Greens). Laikipia

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institutionalisation, KWWG would be a spent force. Its story would then have been similar to the first National Wildlife Forum.

Wildlife Forum argued that KWWG was taking an overtly pro-hunting stand that created wrong perceptions of KWWG. These wrong perceptions were in turn negating Laikipia Wildlife Forum's initiatives and undermining its partnership with donors, NGOs and communities (KWWG 3, 2004). According to KWWG, the problem was the intrigues by the Greens. They were thought to be putting pressure on Laikipia Wildlife Forum to pull out of KWWG. The pull-out would have weakened the image of KWWG because Laikipia Wildlife Forum is among the three well-organized fora.

Given all these pressures, the question may then be asked why KWWG was not quick to let the ministry take over the legislative review process. Several reasons may account for this. In one respect, KWWG was suspecting some foul play given the way state organs were handling the GG. Bill. Secondly, they were concerned that the takeover bid could be a delaying tactic, and third, there was the dilemma presented by NARC<sup>144</sup> politics.

### **KWWG'S Reluctance to Work Within the Establishment**

KWWG was concerned that when the GG Bill was handed over to the technocrats who fine tune parliamentary bills before they are debated, it had been tempered with beyond acceptable technical inputs (KWWG 7, 2004).<sup>145</sup> When they consulted those parliamentarians who are also lawyers, the latter argued that the only way out was to introduce amendments from the floor of the House (KWWG 8, 2004). A document that was

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<sup>144</sup>Politicians who came together on the eve of the 2002 General Election formed Narc to contest against the then ruling party (National Rainbow Coalition) instead of contesting through individual political parties. Some politicians, however, retained allegiance to their parties, even when they were elected on a Narc ticket.

<sup>145</sup>If this happened, it may have taken place between the office of the Clerk to the National Assembly and the Attorney-General's Chambers.

produced towards this end throws some light on what KWWG considered extraneous introduction. In one case, after proposing to “Delete in toto” (KWWG, 2004e) the clause on definitions, the memo concluded that “The proposed definitions are ill-thought out, badly worded and unnecessary. They have no relevance to amending the GG amendment” (KWWG, 2004e). Another disputed clause (RoK, 2004b: 10 (b)), sought to give the Director of KWS powers to regulate utilization of land in which wildlife is to be found. The memo stated that it was “unacceptable” because it amounts to giving the Director power to determine utilization of private land contrary to the provisions of the Agricultural Act (Cap 318), and that in any case the Director’s powers are provided elsewhere in both the parent Act and the GG Bill (RoK, 1977a: 47 (2)(c)(d); RoK, 2004b: 47A). The memo observed that “Whoever drafted it was profoundly ignorant of the existing law” (KWWG, 2004E). This and other clauses (such as 11, 12, of which the memo recommended “Pointless: delete completely” (KWWG, 2004e))<sup>146</sup> suggest that there were things that appeared in the Bill tabled in Parliament that fundamentally changed it from the one KWWG had crafted with the mover.

Moreover, KWWG could not feel comfortable entrusting a project they had banked on so much to an institution that they felt was hostage to the Green lobby (see, for example, Kabiri, 2006). As observed above, the minister had approached the convener of the MPs Wildlife Caucus to intervene with the sponsor of the motion, yet this particular MP had no reservation in expressing his distaste for the adverse influence of the Green lobby in Kenya’s wildlife policy. During the KWS-organized stakeholders’ conference, he confessed, while giving a vote of thanks to the ministry, that as a result of the conference, he had formed a different view about the minister after the latter attended the conference throughout to listen

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<sup>146</sup>The two clauses amended sections in the principal Act that deals with hunting.

to the landowners. Otherwise, he averred, he previously had always looked upon the minister as one who was captured by the Greens (KWS Conf. 2004). KWWG members also shared this view (Powys, 2002). Thus, given this KWWG attitude to the establishment, handing over the bill to the ministry would have amounted, in KWWG's view, to contracting the Green lobby to author it in their own image, if at all it would be authored. Furthermore, the ministry had a legacy of stalling wildlife legislative review initiatives.

KWWG feared that, if the history of legislative review was anything to go by, the ministry's desire to intervene could be a delaying tactic to drag the review for ever. One KWWG member narrated that when he was trying to start the first wildlife ranching in Kenya in 1977, he communicated with the wildlife service and they told him that they were reviewing the policy and will get back to him. He had not heard from them by 2004 when he was making these remarks (EAWLS kcb, 2004). In addition, the ministry was giving conflicting signals regarding their intention to review the wildlife legislation. For one, when KWWG visited the ministry for the first time, they were advised to pursue selective amendments since a comprehensive review of the wildlife Act was not a priority because attention was on the mining and forestry sectors (KWWG, 2003). Even a KWS official claimed the same advice had been given to them in the past: that if they have problems with some aspects of work, they could review those rather than thinking of reviewing the entire Act (EAWLS kcb, 2004). As the temple for the GG Bill gained ground, opponents began saying that what was required in the wildlife sector is not piece-meal reforms but a comprehensive review of the Act. As pointed above, even USAID was considered to share this opinion (KWWG 9, 2004). This shift in gears could thus be seen as an attempt to deflate a process that was already headed to conclusion. By the time such proposals favoring

comprehensive review appeared, KWWG was deep in rapport with the legislators, albeit they still had the schism in the national party politics to take care of.

### **KWWG and the NARC Politics**

The division in the NARC politics represented yet another dilemma for KWWG, and particularly in terms of handing over the review initiative to the ministry. With one section of NARC having denounced their partners in the ruling party, the fear was that if the initiative goes to the floor of the House as a government agenda, the rebelling wing could side with the opposition to shoot it down. This problem was not hypothetical. Previously, the Forest Bill that was tabled in Parliament as a government bill was rejected. Some MPs who voted against it claimed that there was nothing wrong with the bill but they shot it down in order to teach the government a lesson (Nation 3, 2004). When the KWWG chairman held consultations with some MPs, a few thought that the bill should perhaps be withheld so that the anti-government heat could cool down and hence avoid a replay of the Forest Bill. The rest, however, were of the opinion that the GG Bill was not a government bill and could thus not suffer the fate of the Forest Bill (KWWG 7, 2004). The fears of a backlash in Parliament became more pronounced, however, when an acting minister took charge of the ministry. The minister had broken ranks with his colleagues in the NARC-affiliate party that had rebelled against the government (even though they were still serving in government). Rumors were then in air that if the minister were to move the bill instead of the original sponsor, then the MPs in the rebelling wing of the coalition (the Liberal Democrat Party) would oppose it.

The rumors seem to have been so real to those close to the lobbyists of the bill that an article appeared in the daily press urging the MPs to put aside sectarian differences to avoid killing a policy that they, as individuals, subscribe to (Forster, 2004). Thus KWWG had grounds to fear that the GG Bill could meet the fate of the Forest Bill. Consequently, they argued that the ministerial overtures to take over the bill should be rejected. It was thus presented to Parliament as a private member's bill.

### **VII The Wildlife Amendment Bill, 2004 in Parliament**

The bill was debated in Parliament and, remarkably, the heat it generated outside Parliament was not reflected inside Parliament. This suggests that there were forces outside Parliament who seemed to draw their inspiration from elsewhere other than from the communities. Had this inspiration been drawn from the communities, then the people's representatives in a Parliament that is arguably very free to air its views (vide its assault on the Forest Bill), could have echoed these sentiments inside Parliament.<sup>147</sup> The reason behind the inside/outside Parliament dichotomy is that the center of conflict lay in the sensationalized politics of sport/recreational hunting. This is a question that seems to have been inspired by ethical considerations on the side of those fronting for it, the animal rights or Green lobby.

Nevertheless, because they operate in a secular state, it was not possible to advance overtly the argument that their opposition is founded on moral grounds. So, it would appear that their strategy was to argue in empirical terms in which they averred that sports hunting is not tenable because one, there are no structures to regulate it, and two, it does not guarantee any benefits to the local communities but will only benefit the rich ranchers. In the latter

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<sup>147</sup>Of course, critics of the bill can claim MPs are compromised, as one of the placards cited earlier posited.

case, they may be understood as playing the race card because most of the big ranchers involved in the wildlife industry are Kenyans of European ancestry. The provision for consumptive utilization in the GG Bill was, perhaps more than any other of its provisions, responsible for the acrimony it generated.

### **VIII Center of Conflict: the Greens and the Politics of Sports Hunting**

The GG Bill sought to re-introduce non-consumptive utilization of wildlife (RoK, 2004b: sec 10 (b) (3). This was the most contentious issue. As stated earlier, hunting was banned in 1977, but elements of it were re-introduced in 1990 as wildlife cropping. Nevertheless, Sport-/recreational hunting was not re-introduced, in spite of several KWS administrative initiatives to review the wildlife sector favoring its re-introduction (KWS 1, 1990; KWS, 1996; Wanjala and Kibwana, 1996). In the 1990 KWS policy review, for example, KWS noted that it may have to concede wildlife consumptive utilization in land use (1990: 42, 46ff, 53). The re-introduction of sport- hunting nevertheless remained elusive up to the time of the GG Bill when its implementation seemed imminent. Various forces were associated with the drive to either re-introduce or oppose its re-introduction. Certain observers of the wildlife sector pointed at the big land owners as the ones behind the push for the re-introduction of sport-hunting (see, for example, Opanga, 1997; COBRA 1, 1994), while the hoteliers and the Green lobby are, on the other hand, associated with the opposition to its re-introduction (KWS, 1996: 6). The anti-hunting lobby is somehow able to sell its case to the government.

As far back as 1975, for example, the government had issued a policy paper on wildlife in which it argued in a way similar to that of the hoteliers and tour operators, as an



appeal to the west's sympathy to the country's pursuit of sports hunting. The statement observed,

Overseas public education activities are extremely important, from the standpoint of the future economic value of wildlife. Potential donors must be informed of the difference between simple preservation and conservation, so that donations do not dry up due to misunderstandings. Even more important, we must ensure that the potentially large and secure export market, for the products of consumptive wildlife utilization (sports hunting, sales of meat, skins and other trophies), are not foreclosed through ignorant "preservationist" pressure on overseas Governments and firms. Already there is some evidence to suggest that prices of some skins have fallen due to such pressure. If wildlife are to "pay their way" over large parts of Kenya, such development as this must be reversed—and quickly (RoK, 1975, 35).

The government was thus sensitive to two issues related to sport-hunting, one, the enterprises that are based on the wildlife sector, and two, the donations to the wildlife sector. Tourism is a critical player in the economy not only because of earning direct foreign exchange but also because of its contribution to the economy through the spin-off benefits that are associated with the hotel industry that tourism supports. To this extent, the hoteliers and tour operators who, unlike landowners, have for a long time been organized in powerful lobbies such as KATO, are always eager to voice their concern to the possible image dent that a resumption of sport-hunting could effect on the country's tourism industry.<sup>148</sup>

The government is also alert to the voice of the donors because, while it values the wildlife sector as an engine of economic growth, it is unable to allocate a sufficient budget to it due to other pressing demands and thus relies on donors to fill the void (see, for example,

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<sup>148</sup>Since the demise of apartheid in South Africa, some proponents of sport-hunting have argued that the argument that tourists were being lost because they find sport-hunting morally repulsive has been discredited because Kenya is now operating under the fear of losing its traditional clientele to South Africa, yet the latter pursues consumptive and non-consumptive use of wildlife (Mathenge, 2002; see also Loefer, 2004b).

Kabiri, 2006).<sup>149</sup> It is in this light that the NGOs, and especially the Green lobby, have become an active player in the formulation and direction of the wildlife policy in Kenya (whether formally or informally). As argued in Kabiri (2006), landowners who are the proponents of sport-hunting, hold the Greens as entirely responsible for the failure by the government to legalize consumptive utilization of wildlife. The Greens on the other hand, do not make secret their opposition to sport-hunting, though they may not own up to the implicit accusations of compromising state wildlife officials (KWWG, 2003c; Powys, 2002).

In their opposition to sport-hunting, the Greens portray it as not being in the best interests of the wildlife conservation project. They argue that if the latest experiment in wildlife cropping is anything to go by, consumptive utilization would only benefit a tiny segment of society, yet wildlife is a national heritage. The latest cropping project, they argue, was confined to a small class of rich large landowners that has made consumptive wildlife utilization an elitist phenomenon. This argument is then slanted to impress on the fact that these large landowners are whites, thereby giving the clamor for the re-introduction of sport-hunting a racial accent. In a presentation prepared for the KWS Board of Trustees, KWWG in asserting its legitimacy, was forced to address this racial slant that threatened to cloud their identity. They averred that

We are a genuinely participatory and democratic organization representing solely the interests of private and communal Kenyan landowners and landusers...

We feel it is important to reiterate this, to redress the inaccurate perception that the KWWG is some sort of elitist club of rich, mainly European, landowners interested only in game cropping and trophy hunting (KWWG, 2003a).

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<sup>149</sup> Donors heavily subsidize the KWS budget and if they withdrew funding, its activities could severely be compromised (see, for example, KWS/USAID, 2004).

The perception referred to emanated from the cropping legacy where large landowners, who were also whites, were said to have been favored in the allocation of quotas for cropping (EAWLS 8, 2003; KWS, 1996:12; People, 2004a and 2004b).

This story line has been rehearsed so well that it has almost become popular opinion. Indeed, even when KWWG initially made forays into Parliament, most parliamentarians were concerned about what stake was in the project for the people or whether the venture was simply for European ranchers (KWWG 7, 2004). This echo of big ranchers was formally heard when the parliamentary committee reviewing the GG Bill recommended the rejection of a clause (RoK, 2004b: (15)) that sought to replace the minister with the KWS Board of Trustees as the agent overseeing recreational hunting. In the current Act this role is assigned to the minister (RoK, 1977a: 37). The committee recommended that the powers must remain with the government because “The Board may easily succumb to external influence more so in areas where the big Ranch farmers’ interest are (sic) concerned” (Parliament, 2004). In taking this position, the parliamentary committee could take recourse to public debate to claim that they were not simply entertaining wild imaginations. An opinion article in print media had asserted, for example, that

For the record, when Njonjo was the chairman of the Board and Leakey the vice-chairman, KWS danced to the whims of game ranchers and to the detriment of Kenya’s conservation goals (Mbaria, 2003).

This can then be seen as a hint that in popular opinion, there is a feeling that the big ranchers may not be trusted with the wildlife sector.

The specter of white big ranchers as being the ones who will be the single beneficiaries of a sports hunting project had become so dominant that in a workshop on

wildlife utilization, the Speaker of the National Assembly<sup>150</sup> had to counter, while reacting to an opponent of sport-hunting who had argued along the racial lines, that such opponents had to be disabused of the notion that a landowner means a white rancher (KWS conf, 2004). A parliamentarian added that proponents of wildlife utilization have been depicted as acting at the behest of the white ranchers, but in any case, these ranchers are also Kenyans (KWS conf, 2004). The KWWG chair also took up the issue and argued that while he had been accused of fronting for the white ranchers, it should be made clear that there were only 71 of them, majority in Laikipia district, while in Tana River district where he comes from, there are no white ranchers (EAWLS kcb, 2004). The Greens, therefore, had managed to make the issue of class and race a factor in the way the debate on consumptive utilization was handled. This served them well because the two issues are emotive, given the level of deprivation among most communities that suffer damage from wildlife. It was, therefore, easy to whip up emotions against recreational hunting through the twin issues of disproportionate benefit-sharing and, as shown below, resource degradation.

The anti-hunting lobby further argued that consumptive utilization, as was carried out under wildlife cropping between 1990 and 2003, proved that it can be a disastrous wildlife management technique. In several fora where wildlife utilization was discussed, the Green lobby argued that it was used as a conduit for, or at least inspired, the bush meat trade that is blamed for the decline of wildlife in large numbers (EAWLS 8, 2003; EAWLS 10, 2003; EAWLS 11, 2003; KWS conf, 2004). In addition, KWS was unable to supervise cropping

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<sup>150</sup>Who is always quick to say he discusses wildlife issues in such fora in his private capacity as a landowner, not as the Speaker of the National Assembly (KWS conf., 2004).

quotas with the result that animal census were inflated leading to over-harvesting.<sup>151</sup> To this extent, it was argued that if KWS was unable to control a pilot cropping project, how can it run a sport- hunting industry? The favored conclusion then is that if sport-hunting were introduced it would be unmanageable and thus spell doom to the wildlife sector.

Nevertheless, KWWG and the proponents of consumptive utilization saw the Greens' position in a different way. They argued that the opposition to hunting is based on

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<sup>151</sup>Studies commissioned to review the wildlife cropping scheme were not unanimous on whether it was a success. They polarized the protagonists just as before, with each camp supporting studies deemed to verify their position. While the Greens supported the report that argued that cropping was abused because it was KWS' own review (a convoluted logic though, given that the consultants are free to report as they wish), landowners said in several fora that the census that informed cropping quotas was done annually and approved by KWS representatives. Another study (Barnett, 20002) that showed that animal numbers had increased where cropping was practiced was rejected by the Greens. They said it had not factored the ranchers' manipulation of animal movement. They claim ranchers enclose wildlife in the ranches during census, giving the wrong impression regarding wildlife in the ranches. This line of reasoning was actually pursued through a question to the principal investigator in the study during a wildlife seminar for stakeholders to review the GG Bill (EAWLS kcb, 2004). Similarly, a wildlife study KWS/USAID funded through the COBRA project that recommended wildlife consumptive utilization, came under criticism from one evaluator of the project. The criticism posited that the

Composition of team commissioned to undertake study undermines its credibility. Even though the conclusions reached by the utilization study, that consumptive wildlife-use rights can and should be devolved to landowners is reasonable, the composition of the team undermines its credibility. Some team members are closely connected with large private land holders and managers, the group that stands to benefit most from an easing of regulation controlling consumptive use of wildlife. The input from communities was minimal. This was reflected in an unbalanced analysis of the issues.

On cropping, the criticism argued that

....the technical component of the utilization study understated what appears to be some serious problems with the pilot utilization program now in place. For example, it is claimed in the report that wildlife numbers in Machakos are stable in spite of cropping. Close scrutiny of the data tells a different story. The statement that overall wildlife numbers remained the same between 1991 and 1995 is correct. However, of the 8 ranches that had utilization quotas between 1991 and 1995, five registered a decline in wildlife numbers that ranged up to 42%. One ranch, however, claimed an increase in wildlife numbers of 256%. The remarkable biological performance of this one ranch made up for the loss in the other five ranches where wildlife numbers were reduced. Unfortunately, it is difficult to believe wildlife count figures, especially when quotas are calculated as a percentage of wildlife numbers as determined by the user. Therefore, while agreeing with most of the recommendations reached by the utilization study, we feel it lacked balance. This we attribute to the composition of the team that undertook the study. A different team probably would have come up with different recommendations (AWF commissioned the team of consultants (Queiroz, n.d.: 10-11)).

preservationist ideologies that oppose killing of wildlife for sports. In executing their desires, KWWG contend, the Greens have an advantage over landowners because they are able to capture policy makers (by doling out donations to KWS) and hence impose their ideology on Kenyans (see Kabiri, 2006, for a further exposition on how this argument was propounded). This clout of the conservationists was not a new phenomenon. As we saw in the last chapter, they were active in trying to impose their view of conservation on the state right from the colonial era. Even bigger actors such as the World Bank could not ignore them. As Western has observed, conservation actors trying to bring in community interests in conservation projects had difficulties looping in the bank because it was sensitive to what the environmentalist would do. Western writes that,

The World Bank, though warming to the idea of balancing conservation and development, fretted about the response of conservation groups. The last thing the Bank wanted was a roasting from the environmentalists for letting the Maasai get a foot back in Amboseli after Kenyatta had annexed the land for wildlife. The Bank only accepted when the New York Zoological Society supported the project (Western, 1997: 130-1).

Thus, while proponents of the Bill never made secret the fact that they want to make capital out of wildlife, their interlocutors' position was not merely what was played out in public. It may have had nothing to do with the reasons advanced in public; rather, it was about a certain ideological adherence, but one that was sponsored in public through the language of ecology. It was a project aimed at preserving certain areas as pristine as possible, devoid of human activity. This desire has to do with what one commentator of these struggles has called a pseudo-ideology, emotional conservationism or religious environmentalism that perceives human activity on nature as immoral (Loefer, 2004a, 2004b; Bonner, 1993). Sport-hunting certainly offends this desire more than anything else, thereby making it a

highly emotive and politicized issue (USAID/Kenya, 2004; Leakey, 2001; Pearce, 1998; Western, 1997; Bonner, 1993) hence, the protracted opposition to the GG Bill.

The question for analysis here is whether the opposition was informed by a desire to see a well fashioned wildlife sector or it was ignited by a sentimental view of wildlife as the bill's proponents felt. As discussed above, many proponents of the bill had no doubt that this sentimental aversion to hunting was the central thread informing the opponents of the bill. There are compelling grounds to support this view. The claims of the opponents were too frail to stand on their own. The anti-bill lobby argued that it is inappropriate to introduce hunting yet there is no infrastructure to regulate the industry. They also averred that managing the hunting enterprise would not be possible given the corruption levels in the country and, therefore, hunting should not be introduced until corruption was completely wiped out first (EAWLS 11, 2003; Mbaria, 2002). The problem of re-introducing hunting was also portrayed in terms of the proposed structure of the board of KWS. It was argued that given that landowners will dominate the board (not really, as will be shown latter), and the board will have a hand in hiring the director, then it would mean that sport-hunting would be regulated by the ranchers through their proxies and thus there would be a conflict of interests (KCWCM 5, 2004). Examples were also cited from Tanzania where it was said that the sport-hunting project is in disarray, with the slaughter of wildlife having reached uncontrollable proportions (EAWLS 11, 2003; MERC, 2002).<sup>152</sup> In light of these, opponents held that sport-hunting would only benefit hunters, not the communities.

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<sup>152</sup>Critics of the hunting industry in Tanzania were brought to give their view on the game carnage and agony of communities in areas where hunting was taking place (EAWLS 11, 2003; See also, MERC, (2002) for a report on the Loliondo hunting scandals — as its critics call it. On whether consumptive wildlife utilization in Tanzania should inform Kenya's policies on whether to hunt or not, see, for example, Kabiri, 2005a).

Their opposition, however, failed to disclose discernible reasons for the stand they took. To argue, for example, that there was no infrastructure to support sport-hunting without specifying what kind of infrastructure they were referring to was tantamount to asking the proponents of sport-hunting to pursue a mirage. What would have been expected of the opponents was to tabulate sequentially what should be put in place for their standards of infrastructure to be satisfied. Similarly, the claim on corruption sounded almost hilarious. While it is true that this is an issue, to claim that it needed to be wiped out completely before sport-hunting was introduced was to set standards for one sector that were not prescribed for other sectors; why in sport-hunting? Corruption pervades various facets of a body politic and the only way out to deal with it is vigilance by those members of society with an interest in a particular sector. In this way, they would help to police and regulate the industry. Otherwise, it is presumptuous to pose the proposition that life should stop because there is corruption in society; and no known society has in any case wiped out corruption, in whatever ways one may define it. Hence, the claim by the opponents fails to muster credibility in the way it was executed.

In addition, the opposition, as outlined, failed to give other dimensions of the hunting enterprise which could, if animal sentimentalism was not the issue, lead to a different conclusion. In one respect, hunting in Kenya has been going on, only that it is illegal. Opponents of re-introduction of legal hunting did not say how this should be stopped. They operate on a very strange proposition: that legalizing sport-hunting will provide a cover for the bush meat trade. The untenable implication is that if you curtail legal sports hunting, bush meat trade will wither away. Yet, poaching also serves local dietary concerns and other interests first and foremost.



On the other hand, the proponents of sport-hunting contend that one way out is to give communities some incentives to control illegal hunting by giving them a stake in wildlife, hence the need to give them quotas in sport-hunting. This seems to be a more resourceful way of controlling the problem than merely slapping a ban, which has not worked anyway. Moreover, the Tanzanian experience was quoted disingenuously. Communities in Tanzania are not calling for the abolition of the hunting industry, but rather, for a stake in its control so that they can stem the malpractices going on in the industry (see previous chapters on Tanzania here). Thus, both communities in Tanzania and the GG Bill share the same platform. The argument against the bill was being crafted selectively in so far as it could undermine the sports hunting project, the actual cause for the opposition to the bill; other issues were merely diversionary. A look at the issues that were debated in the GG Bill throws more light on the significance of the unstated claims in the opposition to the bill.

### **IX Issues in the GG Bill Debate**

Two of these issues included, one, who the stakeholders in the wildlife sector are, and a concomitant question being who owns wildlife in Kenya. The other issue touched on who would drive the process of legislative and policy formulation, with the attendant question being whether the GG Bill addressed the interests of the majority of Kenyans.

#### **On the Question of the Share Holders and Ownership of Wildlife**

In a debate as heated as the one dealing with how to utilize a resource, the question of who are the stakeholders is not merely academic. It is a practical question because underlying its resolution is the confirmation of, or exclusion from, locus standi to participate in the

deliberations at stake. The disputants in the wildlife sector in Kenya are very alive to this fact and their conception of stakeholders has to do with either eliminating nuisance contenders from the sector, or giving one a foothold in the sector. While some people argued that the stakeholders are the landowners, the state and the NGOs, majority of the landowners hold that the government and the landowners are the stakeholders in the wildlife sector with the rest only being interested parties (KWWG 3, 2004). The question of interested parties was heavily debated during the KWS-sponsored wildlife utilization conference. Opponents of community ownership of wildlife argued that wildlife cannot just be conceptualized as belonging to those living with it because if a river starts from somebody's farm, even others down stream have a right to it. This was an attempt to conceptualize wildlife as national property.

While one camp applauded the definition of wildlife as a state property just as titanium or gold, and as a national resource, the distinction of stakeholders and interested parties was eloquently articulated by the Speaker of the National Assembly. He contended that the proposition that wildlife belong to the state is one of a century ago.<sup>153</sup> He posed the question, to thunderous applause from the floor, "Who says that wildlife belongs to the government and who is government anyway?" He contended that in any case, people are the government and the government exists to ensure the wishes of the people are met and not the other way round. In addressing the question of ownership, he posited that there are various groups in conservation.

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<sup>153</sup>Nevertheless, this proposition is repeated in several quarters. Kamari-Mbote (2002: 158, 171), for example, observes that in Kenya, the state owns wildlife. She, however, favors joint ownership among individuals, communities, local government and the state because their land provide wildlife habitat (Kamari-Mbote: 2002:184). In this respect, she shares Kaparo's opinion. However, a proposed Wildlife Bill, 1996, that was never implemented had defined wildlife ownership as being vested in the state whether it was in private, trust or public land (Wanjala and Kibwana,, 1996:18).

These groups included those who have never seen any wildlife except in books, or websites or zoo, yet they are the ones who seem to love wildlife more, even more than those who live with the wildlife; then there are those who live with the wildlife and bear the cost of wildlife production; there are those who make money out of wildlife, but put in nothing into the sector; then there are those who pretend they know policy, yet they know nothing, and then there is the government that presumes it owns wildlife, yet fear codifying its ownership into law (for fear of incurring liability). From this, he concluded that wildlife belongs to those living with it and advised the animal lovers that the earlier that is recognized, the better for their enterprise otherwise they will soon have nothing to be sentimental about because wildlife will disappear (because communities will eliminate it). A number of parliamentarians who addressed the same issue in other wildlife seminar fora shared this opinion and insisted that the people own the wildlife; another parliamentarian claimed that in areas such as southern Africa where the government has devolved wildlife to local communities, wildlife is part of livestock,<sup>154</sup> while another stated that it is him (meaning as a citizen) who owns the wildlife while the government only owns it in a political sense (EAWLS 11, 2004; EAWLS kcb, 2004).<sup>155</sup>

The argument on stakeholders versus interested parties as advanced by Kaparo is supported by others on the ground that the issue at stake is that of agricultural land. To this extent, for people other than the government to claim a right over resources in private land is

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<sup>154</sup>Child (1990:164) observes that in Namibia, the 1967 wildlife legislation gave full ownership rights to landowners. Namibia is one of the countries the Kenyan delegation on the Southern African wildlife tour visited.

<sup>155</sup>It was not clear what he meant by state ownership in a political sense after claiming that he owns it. But this claim was perhaps along the same lines of land ownership. While individuals have titles giving them private ownership to land, the government retains ownership of all land through the doctrine of eminent domain (see, for example, URT, 1977 (2000); RoK (1998) sec. 75, 118-119).

to imply invading private property and would constitute a taking. These other people have rights over wildlife in national parks and, therefore, the question of who owns what wildlife should be seen within the context of the migratory nature of wildlife. When wildlife is outside the parks, it belongs to the landowners on whose land it is and when it is back to the park, it belongs to the state and hence the public. Proponents of that thinking contend that those unwilling to buy that kind of arrangement should simply ensure that wildlife does not migrate into private property and it will remain in the parks and hence remain under state/public ownership. Thus when the parliamentary committee reviewing the GG Bill stated that it received “comments by stakeholders involved in wildlife management” (Parliament, 2004), according to the opinion of landowners, it should be understood to mean interested parties. This is because among those it calls stakeholders are USAID and AWF.

Nevertheless, KWS seems to have emerged out of the conference it sponsored with the notion of the multiple ownership of wildlife. In a seminar where KWS presented the conference report, it stated that the local communities ought to recognize that wildlife in their lands also belong to other people and hence, they should not deny the people and other range states the benefit of wildlife (EAWLS 7, 2004). This position of KWS was subtly reiterated by the acting minister in charge of wildlife when he addressed a seminar on the GG Bill a few days before it was passed by Parliament. While claiming that he was not giving policy pronouncements but he was just sharing his thoughts, he raised the issue of stakeholders and drew an analogy from the tea industry. He averred that if the tea industry collapsed, it was not only the people in tea-growing districts who would be affected, but the entire country because tea is a strategic industry. From this, he observed that while there are primary stakeholders such as tea pickers, the industry also involves other Kenyans. Consequently, he

argued that the whole country is a stakeholder and, therefore, as people look at the question of stakeholders, they ought to understand that there is a bigger picture to which to concede (EAWLS, kcb, 2004). My reading of the mood of the Green lobby in the hall was that they were evidently elated because the minister, oblivious of, or ignoring, the nuanced differentiation between stakeholders and interested parties, had indicated that those claiming a stake in the wildlife even when they are not landowners have allies within the corridors of power.<sup>156</sup>

This apparent convergence of thought between the Green lobby and the decision-makers was, however, out of step with the general view on the ground among communities living with wildlife. What community representatives were voicing in seminars dovetailed with what one would get from the field. During field interviews, villagers were almost unanimous that albeit the government claims the ownership of wildlife, landowners are actually the ones who should own it. Villagers aver that they live with the wildlife, protect it and incur costs from it; these are expenses that the government refuses to foot. At the minimum, the communities expect to be involved in wildlife management. These are the same sentiments that KWWG expressed to the KWS Board of Trustees. On the question of the conservation and management of natural resources on private land, they stated that,

Together, the members of the Forums of the KWWG are the custodians of all these natural resources, including wildlife, that lie outside the formally Protected Areas. These resources are on our land; we are responsible for them; we look after them even when they present a financial burden to us. The State may claim ownership, but we are the custodians (KWWG, 2003a).

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<sup>156</sup>This line of thinking did not, however, go down well with community representatives. During the plenary, an assistant minister argued that if wildlife belongs to Kenyans, then his people are not the herdsmen and, therefore, the owners of wildlife should go to his area and take it away (EAWLS kcb, 2004)..

Thus here, we can see a convergence of thought between local villagers, their representatives in the struggles over the wildlife sector, and the Members of Parliament. Thus the KWS review group did not get it right when they observed that “Neither KWS nor the people have clear ideas about who the stakeholders are...”(KWS, 1996:6). As the discussion above showed, both are clear who the stakeholders are; but they have differences of opinion, or at least each could accuse the other of feigning ignorance of who the stakeholders are. These differences in turn affect the question of who should drive the process of legislative review.

### **Who should drive the process?**

While many people acknowledge the need for a conservation policy, should this really be drafted by KWWG? Would it be prudent for the country to embrace a wildlife policy driven by the interests of one group---landowners (Mbaria, 2003).

The challenge we have in reforming our wildlife sector is freeing the policy and decision-making process from the influence of foreign-based extremist animal welfare lobby groups whose agenda is contrary to progressive development (Hon. Lesirma, 2004).

These observations reveal one thing: that the government is not considered a prime mover of the wildlife policy in Kenya. The two forces that are in the picture are the landowners<sup>157</sup> and the NGOs.<sup>158</sup> Thus when in policy fora the question is raised as to whether the policy should

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<sup>157</sup>As the discussion above indicated, those referring to landowners do not simply mean anybody claiming a parcel of land; they have in mind big ranchers, mostly Kenyans of European origins. Nevertheless, when challenged that there are only 71 white landowners and not in every part of the country, one seminar participant on the GG Bill murmured that there are also Kenyan (i.e. black) “wazungus” (whites).

<sup>158</sup>Commentators on the woes bedeviling the wildlife sector and KWS, the state agent charged with overseeing wildlife matters, claim that KWS is hostage to NGOs and big ranchers. But the charge sheet reads differently depending on who drafts it. Those on the ranchers’ side accuse NGOs of holding KWS hostage, while NGOs accuse ranchers of holding KWS hostage, especially when the issue is consumptive utilization (Muga, 2003, 2004; Loeffler, 2004b; Mbaria, 2003; Njaga, 2003, 2004).

be driven by the ministry or KWS, support for or against any of these is premised on how one camp views its proximity to the two, as if knowing that these two are merely pawns in a chessboard. While some people think it is KWS, others object on the basis that KWS is central to the entire issue and is thus likely to pursue the politics of self-preservation. In one seminar, a participant argued that the policy should not be led by KWS, but by a reform body appointed by the ministry and where KWS will just be a member. To this participant, a situation where KWS hires and even pays a consultant to drive the process is unacceptable because such a consultant could end up writing what KWS wants to hear (EAWLS 7, 2004). This view seemed to be shared by many, including the landowners and even KWS donors such as USAID. In responding to the claim that KWS should not lead the process, a KWS officer stated that during discussions with USAID who are funding the review process, the latter insisted that it was the ministry and not KWS who should drive the process.

Whether KWS conceded to this ruling in principle or because, as its critics say, it is hostage to external forces is difficult to observe. What is undeniable is that the views of those who felt that wildlife governance in Kenya, unlike the southern African countries where parliamentarians had toured, are not free of external influence seemed to be verified. In particular, landowners, as represented by KWWG, contend that KWS is captured by vested interests, specifically Green NGOs. They posit that,

organizations such as IFAW, Youth for Conservation or the Born Free Foundation who are so critical of us and who seem to be able to command so much attention. ... are largely funded from overseas, do not necessarily represent the interests of Kenyans. Solely by virtue of their financial strength they can impose their hidden agendas and policies on KWS and Kenya—with impunity and without any accountability (KWWG, 2003a).

The discounting of KWS by the landowners or KWS critics does not imply a vote for the ministry as the driver of the policy process.

The argument can be made that if KWS is not a legitimate vehicle of making wildlife policy, so is the ministry in charge of wildlife. This is because, KWS is the ministry's expert on wildlife matters and, therefore, when the ministry wants anything on wildlife, it performs, has to call KWS. Thus, this line of thought, expounded mostly by the landowners, hold that it is naïve to think that a demarcation can be made between the ministry and KWS. This group, therefore, holds that the policy process is the prerogative of the people and their representatives in government. The role of government agencies such as KWS, they contend, is to implement policy. This line of thought catapults landowners into the forefront of the policy process, but again, this is what the Green lobby objects to.

Landowners, as stated above, are portrayed as an exclusive club, that isolate other interested parties from the wildlife sector and, according to their interlocutors, they should not be entrusted with the policy process. Consequently, a particular refrain was popularized that the GG Bill was driven by partisan interests and, therefore, it did not represent the interests of the majority of Kenyans. This view was shared thus even at the ministerial level. When KWWG visited the minister, they reported him as stating that while the amendment bill was good, "...it needs to be reviewed, as it doesn't address the concerns of the majority of Kenyans" (KWWG, 2004c). This line of attack was pursued vigorously in the run-up to the debate on the bill in Parliament and during the clamor for it to be rejected by the President. The attack was in spite of the fact that KWWG, on its part, defines itself as the voice of land owners, from small scale ones to the big ranchers.

It is then clear that there was a problem of recognizing the legitimate drivers of the policy process. This in turn generated a secondary problem in that irrespective of whatever efforts were expended by what camp, there would be no consensus as to whether the process



has been consultative. The GG Bill was to be a victim of this requirement. While its proponents held that they had consulted widely, the opponents popularized the view that the process leading to the GG Bill had not been consultative.

### **The Question of Consultation**

This country is suffering from a severe bout of what may be described as “interest group hysteria” characterised by the mushrooming of institutions which describe themselves as “stakeholders”. The term “stakeholders” is almost becoming a meaningless cliché. We have a situation where even one-man consultancies are demanding “stakeholder” status, saying their voices must be heard (Kisero. 2004).

In a radical departure from the 1980s, when a bill abolishing compensation for wildlife damage could easily pass in Parliament, the initiatives of the 1990s have been marred by the specter of consultation. Wildlife review initiatives since the 1990s have been derailed on the grounds that not all stakeholders were consulted. The protagonists, however, are again divided over whether this clamor for consultation is legitimate or merely a ruse to derail the process by those who may think they are losing out in the new dispensation that might result from the review. This reservation seems to be the case both in the 1996 and the GG Bill initiatives. The 1996 draft bill is said to have been referred back by the cabinet apparently because it was not consultative. This claim is disputed by some, and even KWS officers concede that it is a claim that some people may have an issue with (EAWLS kcb, 2004). Whatever the case, the 1996 initiative once returned from cabinet ended on that note. The next thing to appear on stage was the GG Bill, 2004. It also inherited the same consultation test, with the same consequences albeit taking different manifestations.

The charge that the GG Bill was not consultative was spearheaded by the KCWC and the KWS. While it was all along clear to KWWG that KWS did not support the bill, KWS

officers confirmed this position openly in a wildlife seminar. A question was posed to KWS officers as to what was the position of KWS on the GG Bill. KWS representative replied that they did not support it because they had met many stakeholders who claimed that they had not been consulted (EAWLS 7, 2004). KCWC also held the same view. Its members<sup>159</sup> who spoke in a wildlife forum debating the GG Bill with the minister in attendance told him that they are opposed to it because it has not been consultative. They told him that the wildlife fora that are behind it do not represent the people because they are for big ranchers who have been managing wildlife in their own way (EAWLS kcb, 2004). Although the chairman of KWWG argued against these views and cited the various times the issues have been debated including the seminars organized by the EAWLS, the KWS-sponsored wildlife utilization conference and the southern African tour by Members of Parliament, the minister seemed to have been swayed by the opponents of the bill. The minister, while giving what he called his thoughts (other than policy statements) on the issue, posited that participation is fine but it should be devoid of vested interests otherwise less endowed Kenyans would be unable to participate. With the benefit of hindsight, given the position that the executive finally took, this was a loaded ‘thought’. It turned out to be the policy.

The GG Bill, as the previous discussion indicated, was, contrary to the claims by its critics, not a solo performance. Both the antagonists and the protagonists invested in influencing the legislators to either vote for it or reject it. Moreover, the parliamentary committee reviewing the bill for Parliament made recommendations which literary read like

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<sup>159</sup>During seminars, participants introduce themselves and mention the organizations they are from. The names of the organizations opponents of the Bill identified with appear in the documents they released to the public. I knew some through my fieldwork. There is a problem making sense of some of the groups and their claims that they are not represented. A person, for example, speaking as a member of the ruling party’s Youth Congress cannot make a legitimate claim of not being represented when the youth straddle across the divide of the conservation debate — unless his view of consultation is that of dealing with the leaders of the youth, hence the elitism they were criticizing.

the wish list of the critics of the bill (Parliament, 2004). This means that the issues that the critics of the bill had with it were formally submitted to Parliament, but Parliament nevertheless voted for the bill. Also, earlier in the year, most of those agitating against the GG Bill were party to the KWS-sponsored conference on wildlife utilization where most of the issues of contention in the GG Bill were discussed. Even though one can say that the KWS conference was marked by controversy, controversy does not negate the fact that the body politic had an opportunity to air their views on the various issues. The fact that they did not agree is precisely why in a democracy individuals have a right to lobby their legislators as the issues are submitted to the lawmakers for a vote. Thus a critique that it was not consultative is largely unsustainable, though it is the one that the Presidential rejection of the bill will be premised on. There were, however, other issues that beset the bill as well.

### **Other Issues that confronted the GG Bill**

Two other issues that were raised by the opponents of the GG Bill included the proposed balance of power in KWS, and compensation for wildlife damage.

### **Balance of Power in KWS**

The GG Bill proposed to have communities represented in the Board of Trustees by people whom they had democratically elected. They thus sought to depart from the current practice whereby the minister chooses the members of the board. In the current practice, communities are not even entitled to a representative appointed by the minister. The composition of the board is from government ministries, plus other trustees whom the minister appoints, with the only qualification being that they should be conversant with

nature preservation (RoK, 1977a (3B1)). The GG Bill proposed to add five more trustees elected by communities (RoK, 2004b: 3(B)(1)(i)). With respect to the appointment of the director that is currently done by the President, the bill proposed that the President appoints the director, but on the advice of the Board of Trustees (RoK, 2004b: (4)).

Apart from the composition of the Board of Trustees, there was the question of exercising powers in running the wildlife agency. Currently, the minister has overriding powers and the GG Bill sought to transfer these powers to the Board of Trustees. The targeted areas included regulation of aircraft landing in national parks, declaration and regulation of national reserves, matters related to hunting and regulation of game trophies and meat (RoK, 2004b: sec. 5, 8, 9, 15, 16, 17). It was this apparent displacement of the government from the agency that the critics of the bill assailed. They charged that this is dangerous for the security of the state given that the wildlife service is a para-military organization which should not be removed from state over-sight (KCWCM 5, 2004; EAWLS kcb, 2004). In a KWWG monthly meeting, USAID-donor liaison actually hinted at this when he told KWWG that the killer of the bill at the President's desk will be the density of civil society involvement in the board yet it is a para-military organization (KWWG 11, 2004). Future events vindicated him, though it is not yet explicit what role the security factor played.

The criticism of the bill in terms of dilution of state stranglehold by community involvement does not square off with the critics' claim that the bill does not represent the aspirations of the people. Local level experience suggests that the representation of the communities is a recurring theme among the communities view of wildlife management. This desire for communities to be involved in the running of wildlife matters had even been

recorded by the KWS review group. It reported that communities from several districts believe that “Our district must be represented on the KWS Board of Trustees” (KWS, 1996: 12, 15). If each district was to be represented, then the picture of the Board of Trustees would become something far different from the one proposed by GG Bill. In any case, the substantive claim that the state is displaced is invalid. The proposed Board would have seventeen members, eight of them being state representatives, while four are from professional organizations and five elected by the communities. This implies that even if one was to assume that community members will also vote against state interests, there are four professional members who could provide the swing vote, and in the event of abstention, the state would have majority vote because members seconded from other state departments are more than five. The critique of state displacement is thus difficult to uphold, and could, therefore, have been generated just to stoke the controversy on the Bill, just as was the case with the other issue of compensation.

### **Compensation for Property Damaged by Wildlife**

Compensation for property damaged by wildlife was provided for in the Wildlife Act of 1976 (RoK, 1977a: sec 62), but it was repealed in the 1989 Amendment to the Act (RoK, 1989 sec.11). The only compensation that has been in force is that of human injury or death. Nevertheless, even this has been the subject of severe complaints by communities because, the amount of compensation for death occasioned by wildlife has been thirty-thousand shillings (KSh 30,000) which most people feel is not adequate. Moreover, even getting this compensation, inadequate as it is, was a difficult experience. The GG Bill sought to both reinstate compensation for wildlife damage and increase the amount to be compensated.

With respect to the latter, the bill sought to specify the amount of compensation, unlike in the previous legislations whereby this amount was not specified but the decision for the amount was left to administrative determination. With respect to injury and death, the Bill proposed paying amounts ranging from Ksh 300, 000 to 10 million, with the latter being the payment for death caused by wildlife. The bill also proposed that compensation for loss to property be pegged to market rates. Nevertheless, it introduced a rider here, which was not in the principal Act, and which was to prove the Achilles heels of this otherwise very community-friendly clause. It proposed that owners of property would have to take reasonable measures to protect their crops, livestock or property from game animals (RoK, 2004b: sec. 62B (4-5)). The critics of the bill exploited this clause to portray the bill as having a sectarian character.

Opponents of the bill argued that the proposed Ksh. 10 million was a ploy to seek community sympathy for the bill, yet the government cannot afford to pay that amount. Moreover, its opponents interpreted the requirements for communities to take due protection of their property in order to merit compensation in the event of wildlife damage to mean that even injury and death would be subjected to the same requirement. In this case, they propounded the impression that people would even be required to take insurance in order to merit being compensated. When they argued about the problem of insurance, they either conveniently avoided, or did not bother, to make a distinction that precaution was only required in case of property, not human life. Hence, they advanced the view that because communities cannot be able to take insurance, if the bill is passed, the only beneficiaries will be the big ranchers as they are the only ones capable of taking insurance coverage. After the bill was passed its opponents appealed to the President to reject it. They claimed that;

If consented to, compensation as proposed by the Bill, will cost the government billions of shillings but still leave out a significant proportion of the local community uncompensated. This is because only when injury, loss or death is inflicted 5 kms from a property hosting wildlife is liable for compensation! The impoverished communities will also be required to pay insurance premiums, which they may not afford (KCWCM 5, 2004).

The content of this appeal is problematic.

For one, issues of distance from property do not appear in the proposed bill, nor is insurance premiums mandatory because the requirement for due care could be effected through other means such as erecting physical barriers as suggested in the bill (RoK, 2004b: sec.62 B (5)). Insurance was only being made mandatory for those intending to engage in wildlife enterprises (RoK, 2004b: sec. 20 (2)). Secondly, while one may use this clause to show that communities will be excluded from wildlife enterprises, it does not support the claim of exclusion from compensation for wildlife damage. While it may not be easy to discern the logic behind these misstatements, an element of turf wars seems to be the one in play here, and not necessarily the search for a viable wildlife governance regime. In addition to the misrepresentation of facts, there are other pointers to suggest that the bill was being opposed for reasons other than the ones overtly cited in public. The issue of Ksh. 10 million, for example, was not new to KWS, and hence, the state. The 1994 KWS review group had reported that

respondents propose rates of compensation for human life ranging from forty-nine head of cattle or Ksh 500,000 to Ksh 10 million, with Ksh 1 million a frequently suggested figure. The compensation suggested for injuries range from Ksh 150,000 to 300,000, plus payment of hospital bills (KWS, 1996:7).

In addition to this, KWWG held the view that the figure of Ksh. 10 million is not outrageous because parliamentarians had already set the stage by voting for themselves a similar amount.

It was thus the opinion of many that there was no way overt opposition in Parliament could be raised on the basis of that amount. On his part, the sponsor of the bill told a public hearing gathering on the bill held in Old Chambers of Parliament that the amount is meant to tell the government and the conservationists that they cannot have their cake and eat it.

### **X Parliamentary Approval, the Presidential Rejection of the Bill and the Emergence of More Issues**

In spite of the spirited campaign to oppose the bill outside the House, parliamentarians nevertheless passed the bill. The opponents, however, mobilized for the last campaign against the bill. They staged street demonstrations urging the President not to assent to the bill, citing reasons as discussed above. At this stage, however, more issues were included. The story line now was that the bill was unprocedural and unconstitutional. Among these was that the President's approval was not sought yet the bill has financial implications to the government. The opponents argued that this should have been done through consultation between the minister for Finance and the sponsor of the bill, and then the minister advising the President to consent to the bill's introduction to Parliament. The question of how they knew that these otherwise official communications did not take place is not made clear. It is, however, telling that they were advising the President that the bill was unconstitutional because, among other thing, he was not consulted. The opponents also claimed that the bill was rushed through Parliament and, therefore, it was unprocedural.

In spite of the seemingly hilarious nature of these claims, the President failed to give assent to the bill and returned it to the Speaker. While the specific reasons were not made public, the general reference to the importance of Kenyans to have a say in wildlife management "since it is a national heritage" (Nation 2, 2005) seems to suggest that the



opponents could have managed to give the impression that there was grassroots opposition to the bill. Alternatively, the state could still have had no intention to give out its clout on the sector, and the public opposition only happened to be a God-send opportunity. The contending civil society actors helped the state retain its preferred outcomes without appearing to be dictatorial as was the case in 1989 amendment to the Wildlife Act. The civil society had, therefore, sorted out itself, thereby shielding the state from a confrontation with communities/society over wildlife property rights.

## **XI Conclusion**

The passage of the GG Bill by Parliament would have effected the devolution of wildlife property rights to local communities. Had it done so, this would have been in a way communities thought was relevant and acceptable to them—having literary authored the GG Bill. Its vetoing and, therefore, failure of the communities to get what they wanted raises a fundamental question as to the state's willingness and ability to devolve wildlife property rights to local communities. This conclusion is, however, problematic.

The state was confronted by two groups, speaking from the vantage point of community interests, but seeking diametrically opposed rights: right to exploit and right to preserve the resource. Even after the veto, supporters of the veto hailed it from the point of view of the people's interests (Nation 4, 2005 and Nation 5, 2005). Thus, while the GG Bill supplies evidence of the incapability of the state to devolve wildlife property rights to local communities, it is at the same time a problematic case study to cite as evidence of that thesis. It is problematic because the identity of community in GG Bill was compromised by the intervention of groups such as KHWCMN, Y4C, (KCWCM) that laid claim to the mantle of

community. This is unlike the case in Tanzania where the community speaks with one voice, even when there are variations in the response strategies adopted by its members. In Kenya then, the state can claim that it refused to yield to vested interests (not to the community); indeed it posed as if it did so in order to defend community interests—if the President’s remarks, and those of people who supported him (Nation 4, 2005 and Nation 5, 2005), are anything to go by.

The question can, of course, be raised as to whether the state has instrumental capacity to identify its subjects, the people/community in order to know who the community is and who are rented crowds. Certainly yes, but doing so would not have been in its interests---at least if the preceding chapter holds. So, it was satisfied with those community voices that were consistent with its objectives or those of its benefactors, the Green lobby.

While what emerges from this scenario, therefore, is a story that casts aspersions as to whether the state can devolve wildlife property rights to communities local to wildlife, the question that obtains is that of whether we hold that the state’s objection was due to its self-interests, or because of the grip the Greens have on the state (vide, RoK, 1975—the appeal to the West to understand sports hunting), or an interaction of the two. The overall idea is, however, that it is difficult to see the state acting in ways that would deliver what communities want: it is fettered by forces either internal or from without.

## **Chapter VI**

### **Conclusion: Devolution in Comparative Perspectives**

#### **I Summary**

At the beginning of this study, it was argued that executing a successful community-based conservation (CBC) model would be difficult given the character of the state in Africa. It was hypothesized that the state is unlikely to devolve wildlife property rights to local communities in a way that engenders a private property right consciousness. Two case studies were examined to throw light on this contention. With respect to Tanzania, I have argued that while at the national level a wildlife policy conducive to community-based conservation has been adopted, its implementation has, however, stalled. The study explained why this has been the case in terms of the interaction of several factors, including state and bureaucratic interests, and the imperatives of party politics that rob communities of the power that could be brought to bear on an intransigent bureaucracy.

While the contentious implementation of devolution would lead to the conclusion that communities have no incentives to sign up for WMA, the findings yielded mixed responses. Some communities acted consistently with our hypothesis, while others conceded to the WMA project. The study accounted for this variance in responses to the WMA project and raised the question whether the transformation of property rights in these WMA could deliver the outcomes envisioned by the proponents of the CBC model.

Two significant findings emerge from the Tanzanian case study. First, state structures,<sup>160</sup> and not necessarily state policies and laws, account for the predicament facing the wildlife sector. This is because state structures can be manipulated to impede implementation. Second, contrary to what was suggested in the property right theory that informed this study, the state may not devolve wildlife property rights in a way that meets the expectations of communities, but the latter can still sign up, under circumstances that need not necessarily lead to a predator resource regime.

With respect to Kenya, the study examined similar contestations over wildlife property rights between the state and local communities that host wildlife. It was shown that the state presents the impression that it can cede wildlife property rights to local communities. Nevertheless, the findings indicate that it is, in practice, unwilling to devolve the rights to local communities except in its own terms. Such terms are apparently not consistent with the expectations of the communities. The state's unwillingness, it was shown, has grown proportionately with the growth of the formal state. The findings disclosed that the initiatives in devolving wildlife property rights failed to secure community allegiance to wildlife conservation according to the wishes of the state. Because of this failure, communities attempted to entrench in law their version of what a wildlife conservation regime should be like.

The communities' effort to institute their own regime failed. The state also failed at the political level to accede to devolution of wildlife property rights. I have argued that the state's inability or unwillingness to devolve wildlife property rights could be a result of two factors: one, economic self-interest, and two, convergence of the interests of the state with

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<sup>160</sup> A bureaucracy devoid of proper accountability mechanisms, and a legal regime not always accessible by those with limited resources (both human and non-human).

those of Green NGOs alleged to hold it hostage through KWS. Whatever the case, the failure to accede to community interests raised a fundamental question of the state's willingness and ability to devolve wildlife property rights to local communities.

However, I found this conclusion to be problematic because of the nature in which community interests were (re)presented. Two groups confronted the state, speaking from the vantage point of community interests, but seeking diametrically opposed rights. While one lobby group sought the right to exploit wildlife, the other lobbied for the right to preserve the resource. Hence, while the GG Bill supposedly supplied evidence of the inability of the state to devolve wildlife property rights to local communities, it is a problematic case study to cite as evidence of that thesis. Consequently, the validation of my central thesis (whether the state can devolve property rights in wildlife in a way that meets the expectations of local communities) cannot be stated without qualification. Apologists of the state can, for example, contend that it can devolve wildlife property rights to local communities but only if communities were unanimous on the kind of devolution they want. Thus, unlike in Tanzania where it can be said that the state is willing (Wildlife Policy of Tanzania, 1998), but incapable (bureaucratic intransigence), in Kenya, the division among interested actors tempers a clear-cut scrutiny of the state. This social dynamic insulates the state from bearing the brunt of responsibility for failure to devolve wildlife property rights.

Thus, there is variation in the response of the two countries to devolution pressures. In one case (Kenya), the state cannot even make a credible commitment to devolve (vide, Sessional Paper No. 10 as contradicted by Wildlife Conservation Act, 1976; and the GG

Bill). In the other case (Tanzania), the state can make a credible commitment<sup>161</sup> (Wildlife Policy of Tanzania, 1998), but it cannot deliver (WMA Regulations, 2002). In both cases, however, the dynamics are informed by the same logic: The political economy of under-development. Both states are developmental states, but yet cash-strapped. Consequently, natural resources are closely guarded as state largesse that can bail it out of fiscal doldrums without much investment energy. Wildlife, because of its role in tourism, is, therefore, a prime target.<sup>162</sup> In this context, the segments of society able to demonstrate to the state that they are the most able to guarantee its interests assume a hegemonic status in the eyes of the state.

At this point, the two states differ. In Tanzania, wildlife bureaucrats enjoy a hegemonic status by virtue of what wildlife brings to the Treasury. Consequently, the state can defer to them in matters related to wildlife. For Kenya, the wildlife bureaucracy, unlike its Tanzanian counterpart, is cash-strapped and relies on donors and NGOs to shepherd the wildlife sector. It is thus the latter who are hegemonic, and their agenda holds sway.

In both cases, the hegemonies are uncomfortable with the inclusion of communities in governance of wildlife conservation. In Tanzania, the inclusion of communities would render the management of the sector more accountable, thus interfering with the non-

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<sup>161</sup>Going by what was referred to in this study as bureaucratic benevolence, it would follow that a change of guard in the Wildlife Division, as one respondent told me, can easily lead to the implementation of devolution in the way articulated in the Wildlife Policy of Tanzania, 1998.

<sup>162</sup>Over the years, the nexus between wildlife and tourism in the imagination of the two states has been betrayed by how Cabinet structures have always twinned the two. This was the case long before the two states set up the Ministry of Environment, and even thereafter. On several occasions wildlife has been removed from the Ministry of Environment and placed under that of tourism. As of now, this is the case in both countries.

competitive rents<sup>163</sup> that accrue to the bureaucrats. In Kenya, most NGOs are of the animal rights persuasion and it is feared that they dread the introduction of sport-hunting, a possible scenario if communities were given the right to decide what to do with wildlife resources devolved to them. Consequently, they oppose a devolution strategy that could give unfettered rights to communities. In both cases, therefore, the politics of devolution of wildlife property rights to local communities is trapped.

## **II What is Being Advanced**

The issue explored was why anticipated devolution of wildlife property rights to local communities would not materialize. The hypothesis was that the interests of the state make it a major claimant to wildlife largesse, and at the same time the regulator of the wildlife estate. This characteristic, interacting with the nature of the balance of power in society (specifically civil society and bureaucracy), predisposes the state to rule in favor of those championing wildlife causes that seem to embody its interests. In this sense, the state behaves along the lines of scholars who have argued that governments, even when they need not be conceptualized as unitary actors, have interests. Krueger (1990: 21), for example, contends, "...political actors have objective functions and constraints that need not mirror the common good or even the preferences of the large majority of the public." Bates (1983:146), arguing along similar lines, states that "States have their own objectives. They want taxes and revenue and intervene actively in their economic environment to secure them."

The fact that the state seemed to have interests in wildlife conservation should not mask the existence of private interests that used the state to achieve their own ends even as

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<sup>163</sup>The phrase is Bates' (1983:111).

the state pursued its interests. As Bates (1983) and Gibson (1999) observed, public policies are not choices made to secure what is socially best, but decisions made in response to organized private interests.<sup>164</sup> Scholarship on imperialism in Africa portrayed the state as a tool of capital (whether international or domestic) (see, for example, Leys, 1975 and Tandon, 1982). In this study, the state emerges as fettered by the imperatives of capital, albeit of a different variant from that of multi-national corporations discussed in the above studies. In Kenya, for example, it is the NGOs, as wildlife sector donors, who were presented as using the power of their largesse to influence the state in favor of their version of administering the wildlife sector.

The perversity of this influence is evident not only from what came out from the communities' protestations against the NGOs, but also from former senior wildlife managers. Leakey (2001:124ff), a two-time director at KWS and later head of Kenya's Civil Service and Secretary to the Cabinet has, for example, claimed that when the NGOs provided the bulk of funding to KWS,

their experts had played an active role in setting the agenda for conservation. The Wildlife Department was financially weak, so donor money could and did have considerable influence in some areas" (p.125).... "I was determined to change the relationship between the Wildlife Service and the NGOs. I wanted us to be telling them what needed to be done, rather than the other way round. (p. 127.)

A similar theme of donor clout can be inferred from another former director of KWS, David Western (Western, 2001), among other commentators on the wildlife sector in Kenya.

Thus, what is encountered regarding the state fits in a pattern that has been observed in Africa, although it has not always been linked to the debate about the possibilities of

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<sup>164</sup>For a variation of this position, see, for example, Kelman (1987) and Krueger (1990).



ceding its grip of the wildlife sector. The contention by Ake (1996) is thus instructive. Ake argues that:

One cannot understand development policies and strategies, let alone the possibility of development, without referring constantly to the nature of the state and the dynamics of the social forces in which it is embedded (Ake, 1996:42).

Hyden (2006) has restated similar observations. He argues that there is need to inquire into the formal and informal networks because they influence policy outcomes. Hyden thus underscores the fact that the state in Africa is not an independent system of power that is predictable and an instrument of development charting new ways forward. Rather, it responds to constraints the community imposes on it. What, however, is not explained is what demand(s) the state responds to when confronted by communities with divergent preferences.

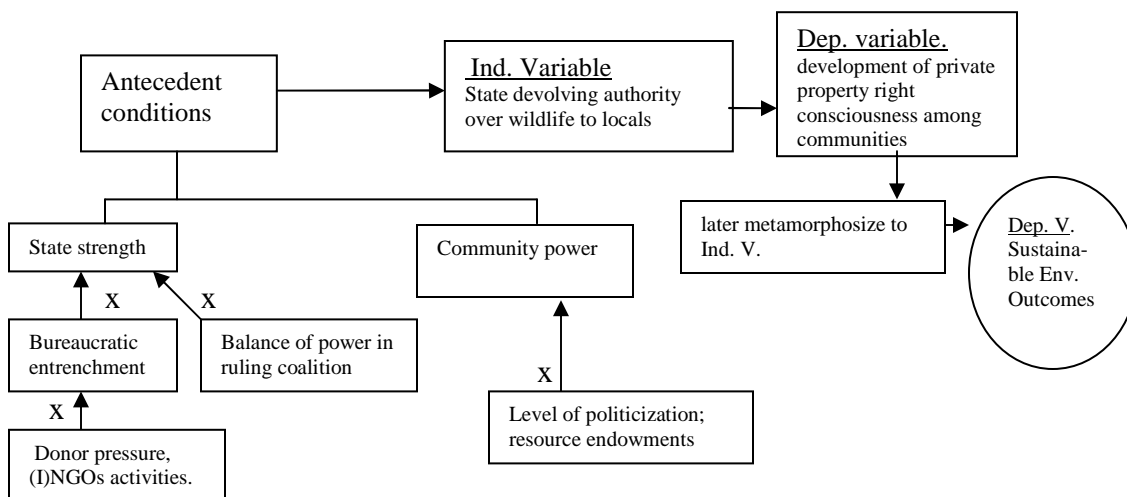
In the past, Bates (1989:9) had argued that “Which group organizes politically and thereby seizes the power to define the system of property rights thus matters.” Yet, while Bates’ contention has merit, in the current study, the explanation encounters some difficulty. This is because, while it could pass scrutiny with respect to Tanzania, the Kenya case suggests that political organization and lobbying were not enough. The configuration of executive power at the particular time when the policy was formulated could override everything else with such vague pronouncements as “public interests” and “not consultative enough.” It is in this context that the theme of informal networks and social forces becomes pertinent, with the implication that explaining why certain things happen(ed) has at times to be left to disciplined conjecture.

Given the foregoing, the question remains as to the conditions under which one would expect the state in Africa to yield to devolution as the proponents of CBC envisage. The

findings of this study suggest that such conditions are to be found prior to the time of devolution. These conditions can be modeled as shown in the diagram below (Figure 4). Otherwise, in so far as the proponents of devolution focus their energies on the point at which the state is supposed to devolve authority to the locals, devolution will likely remain a mirage or a scandal. As the account presented in this study testifies, in Kenya and Tanzania, it is the antecedent conditions that hold the key to the devolution that the proponents of CBC anticipate. In the final analysis, dealing with the antecedent conditions (as depicted in Figure 4) implies a restructuring of the postcolonial state in terms of bureaucratic accountability, state-donor relations and a working (multi-party) political dispensation that would be sensitive to the interests of those affected by societal issues that need adjudication.

To this extent, communities must also be in a position to present effectively their preferred outcome to those who pronounce (not make) public policy. Under such conditions, proponents of CBC can then proceed to elect devolution of wildlife property rights to local communities as a viable strategy of securing environmental sustainability.

Figure 4. Specifying conditions under which viable devolution may occur.



### III Connecting to Larger Processes

The findings in this study reflect processes taking place elsewhere in Africa. In the Gambia, for example, Schroeder (1999) reveals similar experiences to those in Tanzania, where the devolution experiment ends up extending state control over community resources. This study confirms Schroeder's observation that in the devolution experiment, the question of how to devolve without losing managerial control confronts those in charge of resources (Schroeder, 1999: 3). As was the case with Tanzania's wildlife bureaucracy, the forestry department in Gambia sought to regulate marketing of community forestry reserve products and community management of finances. Similar attempts to micro-manage communities in Botswana in what is otherwise supposed to be an experiment in self-governance has been reported by Dzingirai (2003: 254). Community members imprisoned for wildlife-related infractions agonized over the question of who then were free, people or elephants? In the final analysis, what obtains is a phenomenon Ribot (1999: 29) aptly captured thus: "Many apparent decentralization efforts recentralize with one law what they have devolved with another."<sup>165</sup> This study argues that to understand why this happens, one has to focus on the nature of the state in Africa in terms of the interests, structures and the social forces it is embedded in.

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<sup>165</sup>The variation to this story would be the case of Namibia. Some observations I have heard from observers of CBC in Africa suggest that in Namibia communities enjoy a relatively free rein over wildlife resources once these are devolved to them. Similarly, at one time in Zimbabwe, communities had the right to deal with devolved wildlife resources in whatever way they deemed fit. This was, however, reversed once there was a change of guard at the wildlife conservation agency (Child, n.d.). Similarly, in Kenya, the fortunes and misfortunes of community access to wildlife largesse fluctuate with the holder of office at the Kenya Wildlife Service. When communities get what they prefer, such variations are an exception other than the rule in the sense that they seem to be a study in bureaucratic benevolence other than predictable management of public affairs that would be expected in a bureaucracy of Weberian persuasion.

In a similar vein, there are parallels between the Gambia and communities in Tanzania who signed up for WMA under conditions which they would have been expected not to. In the Gambia, Schroeder's account, like the one given for Tanzania, would have led an observer operating in the confines of a private property framework to expect the communities to reject the project. Yet, dozens of communities agreed to participate in the project. As in the case of Enduimet villagers, Schroeder alludes to expediency being the causal force in the communities' participation. Schroeder problematizes community acceptance in a way that also emerges from our study of Enduimet villagers. He states,

Does it signal that rural Gambians have wholeheartedly endorsed the CFMA concept, or does it simply reflect their desperation to (re)gain control over forests in search of expanded economic opportunities? (Schroeder, 1999: 17)

The cases studied here also reflect the theme of transformation of property rights. As Libecap (1989) and North (1990) argued, those who have an advantage in the existing framework, as they seek to perpetuate the system, may block the transformation of the institutional framework. Wildlife bureaucrats in Kenya and Tanzania, as elsewhere in Africa, exemplify this tendency. The history of the struggle for devolution of wildlife property rights bore this contention out. In Kenya, for example, this was evident in the way non-state actors with interests in a certain conception of conservation (non-sport-hunting) marshaled support to frustrate the entry of communities as decision makers in wildlife use. In turn, bureaucrats who feared that they stood to lose if the wildlife agency was restructured to give communities more power in management of the wildlife sector found cause with the coalition opposed to wildlife utilization.

The wildlife bureaucrats in Tanzania displayed similar tendencies and have been able to block for more than a decade a process that can easily be resolved in a single statement.<sup>166</sup> Mwangi (2003) has reported similar trends for the transformation of property rights in communally owned lands in Maasailand, as does Murphree (1993) for wildlife in Zimbabwe. Murphree has shown that the transformation of wildlife property rights in Zimbabwe was as protracted as in Tanzania. In Zimbabwe, the Parks and Wildlife Act 1975 devolved property rights to owners of wildlife-occupied lands. In spite of the legal provision, there was nothing in any communal-land district council to reflect it by mid 1988 (Murphree, 1993:135). Thus, the Kenya and Tanzania cases fit in a pattern discernible in other parts of the continent.

#### **IV Future research**

Garrett Hardin's statement on the tragedy of the commons (Hardin, 1968), especially with respect to natural resources, has largely influenced scholarship on property rights. Elinor Ostrom (1990) took up Hardin's challenge in a seminal work that demonstrated that ruin and degradation are not logical consequences of communal ownership of property. Ostrom's work was to be institutionalized in the rise of a professional organization called International Association for the Study of Common Property (IASCP), recently renamed International Association of the Study of the Commons (IASC).

While the bulk of the scholarship in this tradition is rich on how to manage the commons, and more so the question of private interests in common property, there is less emphasis on the converse of Hardin's thesis, namely, the tragedy of the commons in private

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<sup>166</sup> In Zimbabwe and Namibia, for example, devolution of wildlife property rights to local communities was effected by less than two lines of statute. In Zimbabwe, the 1975 Parks and Wildlife Act simply provides that landowners will be the appropriate authority with respect to wildlife on their land (USAID/Kenya, 2004).

land. The story in this study shows how private actors conceptualize the commons as wreaking havoc on private property. The conversation between the private actors and those articulating common interests raises a question that Okoth-Ogendo (1991: 38 n.1) designated to the level of a footnote. This is the question of the nature of public interest in private property. In the findings of this study, private actors' attempts to internalize public externalities in the wildlife sector have not been well received by the guardians of public interests. While there are constitutional safeguards in dealing with these issues, when it comes to wildlife, constitutional remedies providing for compensation do not seem to be operational. This seems to be the case from Yellowstone to Serengeti National Parks.<sup>167</sup> There, therefore, need to examine more closely the question of public interest in private property, particularly with respect to wildlife conservation.

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<sup>167</sup> With respect to Yellowstone National Park, for example, an NGO (Defenders of Wildlife) has taken it upon itself to raise funds to compensate private actors bordering the park who suffer damage from wildlife, especially the wolf. Yet, when I asked one of the leaders of the NGO who owns wildlife in the US, he was clear that it is the property of the US. One would have expected that the US, as the bastion of private capital, should have set the pace on how to deal with such a problem of public interest. It has not, and my respondent in the case of the wolf in Yellowstone did not have an answer as to why the state should abandon private property owners such that they have to rely on assistance from non-state actors.

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